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Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 88, No. 97

Friday, May 19, 2023

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206–AO41

Processing Garnishment Orders for Child Support and/or Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending the rules for processing garnishment orders for child support and/or alimony (''support regulations'') and the rules for processing commercial garnishment orders. This rule amends both the support regulations and the commercial garnishment regulations to update the list of agents designated to accept legal process under the relevant appendices of our regulations and deletes a duplicative reference.

DATES: This rule is effective June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Melanie Watson by telephone at (202) 606–1700 or by email at *ogcatty@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM has been advised by various agencies of the need for amendments to the list of agents designated to receive legal process under 5 CFR part 581, appendix A, and 5 CFR part 582, appendix A. This rule updates the list of agents and deletes a duplicate reference in 5 CFR part 582, appendix A, that is already listed under 5 CFR part 581, appendix A, with respect to how to serve Navy Exchange Service Command non-appropriated fund employees.

Executive Order 12866 and Regulatory Impact Analysis

This rule has been determined to be significant, but not economically significant, for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget. This rule only makes administrative changes to the listing of designated agents for agencies for ease, clarity, and transparency, and therefore does not have economically significant effects.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities as this rule only applies to Federal agencies and employees.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Parts 581 and 582

Alimony, Child support, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR parts 581 and 582 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

■ 1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262)(1979). Secs. 581.102 and 581.306 also issued under 5 U.S.C. 8336a and 8412a.

■ 2. Appendix A to part 581 is revised to read as follows:

Appendix A to Part 581—List of Agents Designated To Accept Legal Process

[This appendix lists the agents designated to accept legal process for the Executive Branch of the United States, the United States Postal Service, the Postal Regulatory Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.]

I. Departments

Department of Agriculture

Office of the Secretary: USDA, Office of Human Resources Management—Executive Resources, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–0027.

Farm Production and Conservation: FPAC–BC, WDC (NHQ), Attn: FPAC HRD—Room 3223S, 1400 Independence Ave. SW, Washington, DC 20250, 855–344–4793, 833–528–1259 (fax).

Farm Service Agency: FPAC–BC, WDC (NHQ), Attn: FPAC HRD—Room 3223S, 1400 Independence Ave. SW, Washington, DC 20250, 855–344–4793, 833–528–1259 (fax).

Natural Resources Conservation Service: FPAC–BC, WDC (NHQ), Attn: FPAC HRD—Room 3223S, 1400 Independence Ave. SW, Washington, DC 20250, 855–344–4793, 833–528–1259 (fax).

Risk Management Agency: FPAC–BC, WDC (NHQ), Attn: FPAC HRD—Room 3223S, 1400 Independence Ave. SW, Washington, DC 20250, 855–344–4793, 833–528–1259 (fax).

FPAC Business Center: FPAC–BC, WDC (NHQ), Attn: FPAC HRD—Room 3223S, 1400 Independence Ave. SW, Washington, DC 20250, 855–344–4793, 833–528–1259 (fax).

Food, Nutrition, and Consumer Services: Director, Human Resources Division, Food, Nutrition and Consumer Services, 1320 Braddock Pl., Alexandria, VA 22314, (844) 208–2364.

Food Safety and Inspection Service: Chief, Financial Services, Food Safety and Inspection Service, 4520 114th Street, Urbandale, IA 50322, (833) 643–2258 or *FSCGeneral@usda.gov.*

Marketing and Regulatory Programs: Chief, Human Resources, USDA, APHIS, 250 Marquette Avenue, Suite 410, Minneapolis, MN 55401, (612) 336–3317.

Agricultural Marketing Services: Chief, Human Resources, USDA, APHIS, 250 Marquette Avenue, Suite 410, Minneapolis, MN 55401, (612) 336–3317.

Agricultural Marketing Service—Milk Marketing Administration: Personnel Management Specialist, Agricultural Marketing Service, DA, Room 2548—South Bldg., Mail Stop 0228, 1400 Independence Ave. SW, Washington, DC 20250–0228, (202) 690–0212.

Animal and Plant Health Inspection Service: Chief, Human Resources, USDA, APHIS, 250 Marquette Avenue, Suite 410, Minneapolis, MN 55401, (612) 336–3317.

Forest Service: U.S. Forest Service, Human Resources Management, Attn: Pay and Leave, 4000 Masthead Street NE, Albuquerque, NM 87109, 877–372–7248.

Research, Education, and Economics: Agricultural Research Service, Human Resources Division, 5601 Sunnyside Ave., Room 2–WS–1515, Stop—5101, Beltsville, MD 20705–5101, (301) 504–1357.

Agricultural Research Service: Human Resources Division, 5601 Sunnyside Ave., Room 2–WS–1515, Stop—5101, Beltsville, MD 20705–5101, (301) 504–1357.

Economic Research Service: Agricultural Research Service, Human Resources Division, 5601 Sunnyside Ave., Room 2–WS–1515, Stop—5101, Beltsville, MD 20705–5101, (301) 504–1357.

National Agricultural Statistics Service: Agricultural Research Service, Human Resources Division, 5601 Sunnyside Ave., Room 2–WS–1515, Stop—5101, Beltsville, MD 20705–5101, (301) 504–1357.

National Institute of Food and Agriculture: Agricultural Research Service, Human Resources Division, 5601 Sunnyside Ave., Room 2–WS–1515, Stop—5101, Beltsville, MD 20705–5101, (301) 504–1357.

Office of the Chief Scientist: U.S. Department of Agriculture, 1400 Independence Ave. SW, Office of Human Resources Management, Room 318W, Washington, DC 20250, (202) 302–9509.

Rural Development: Human Resources Office, 1400 Independence Ave. SW, Mail Stop 0730, Washington, DC 20250, (202) 720–2278.

Rural Business—Cooperative Service: Human Resources Office, 1400 Independence Ave. SW, Mail Stop 0730, Washington, DC 20250, (202) 720–2278.

Rural Housing Service: Human Resources Office, 1400 Independence Ave. SW, Mail Stop 0730, Washington, DC 20250, (202) 720–2278.

Rural Utilities Service: Human Resources Office, 1400 Independence Ave. SW, Mail Stop 0730, Washington, DC 20250, (202) 720–2278.

Rural Development Business Center: Human Resources Office, 1400 Independence Ave. SW, Mail Stop 0730, Washington, DC 20250, (202) 720–2278.

Trade and Foreign Agricultural Affairs: Human Capital Management Division, 1400 Independence Ave. SW, Room 5071, Mail Stop 1001, Washington, DC 20250.

Foreign Agricultural Service: Human Capital Management Division, 1400 Independence Ave. SW, Room 5071, Mail Stop 1001, Washington, DC 20250.

Office of Budget and Program Analysis: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of the Chief Economist: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of the Chief Financial Officer: USDA, Office of the Chief Financial Officer, 13800 Old Gentilly Road, Modular Bldg. H–8, New Orleans, LA 70129, *ocfo.fms.hr.services@usda.gov.*

Office of the Chief Information Officer: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Civil Rights: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Communications: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of the General Counsel: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of the General Counsel, Office of Ethics: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Hearings and Appeals: USDA, Office of the Chief Financial Officer, 13800 Old Gentilly Road, Modular Bldg. H–8, New Orleans, LA 70129, *ocfo.fms.hr.services@usda.gov.*

Office of Homeland Security: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Counsel to the Inspector General, Office of Inspector General: USDA, Whitten Buildinguiin1400 Independence Avenue SW, STOP 2308, Room 441–E, Washington, DC 20250–2308, (202) 720–9110.

Office of Partnerships and Public Engagement: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Small and Disadvantaged Business Utilization: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Departmental Administration: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Contracting and Procurement: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Customer Experience: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Human Resources Management: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Operations: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Property and Environmental Management: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Office of Safety, Security, and Protection: USDA, Office of Human Resources Management—Payroll, 1400 Independence Ave. SW, Room 318 W, Whitten Bldg., Washington, DC 20250–1400, (202) 720–4175, *HROperationspayroll@usda.gov.*

Department of Commerce

1. *Bureau of the Census, Bureau of Economic Analysis (BEA), and the Office of the Under Secretary for Economic Affairs (OUS/EA):* For Census employee-obligors employed by Census headquarters in Suitland, Maryland; for BEA employee-obligors, and OUS/EA employee-obligors and serviced by Enterprise Services: Enterprise Services Human Resource Service Center, 8400 Corporate Drive, Suite 300, Landover, MD 20785, (888) 316–2285.

1.a. *For employee-obligors employed by the Census National Processing Center and Tucson Telephone Center:* Bureau of the Census, National Processing Center, ATTN: Chief, Employee and Labor Relations Section, Human Resources Branch, Bldg. 63A, Room 2, 1201 East 10th Street, Jeffersonville, IN 47132, (812) 218–3321, or by eFax at 812–218–3492.

b. For employee-obligors employed by the Census Regional Offices:

UPS and Fed Ex: Bureau of the Census, Human Resources Division ATTN: Chief, Information Services Branch, 4600 Silver Hill Road, Suitland, MD 20746, (301) 763–4748.

Certified Mail and USPS: Bureau of the Census, Human Resources Division ATTN: Chief, Information Services Branch, 4600 Silver Hill Rd., Washington, DC 20233, (301) 763–4748.

eFax: Bureau of the Census, HRD Call Center, 301–763–8466.

2. *Patent and Trademark Office (PTO):* Human Resources Manager, U.S. Patent and Trademark Office, Box 3, Washington, DC 20231, (703) 305–8221.

3. *United States and Foreign Commercial Service (US&FCS):* Personnel Officer, Office of Foreign Service Personnel, Room 3815, 14th Street & Constitution Avenue NW, Washington, DC 20230, (202) 482–3133.

4. *International Trade Administration (ITA) (For employee-obligors of the Headquarters/Washington, DC offices only):* Human Resources Manager, Personnel Management Division, Room 4809, 14th Street & Constitution Avenue NW, Washington, DC 20230, (202) 482–3438.

5. *National Institute of Standards and Technology (NIST)and the National Technical Information Service (NTIS) (For NIST employee-obligors; for employee-obligors employed by NTIS):* Personnel Officer, Office of Human Resources Management, Administration Building, Room A–123, Gaithersburg, MD 20899, (301) 975–3000.

6. *Office of the Inspector General (OIG):* Human Resources Manager, Resource Management Division, Room 7713, 14th Street & Constitution Avenue NW, Washington, DC 20230, (202) 482–4948.

7. *National Oceanic and Atmospheric Administration (NOAA) (For employee-obligors in the Headquarters/Washington, DC; the Silver Spring and Camp Springs, MD; and the Sterling, VA offices only):* Chief, Human Resources Services Division, NOAA, 1315 East-West Highway, Room 13619, Silver Spring, MD 20910, (301) 713–0524.

8. *Office of the Secretary (O/S), Bureau of Industry and Security (BIS), Economic Development Administration (EDA), Minority Business Development Agency (MBDA), and National Telecommunications and Information Administration (NTIA) (For employee-obligors in Washington, DC metro area offices only):* Human Resources Manager, Office of Personnel Operations, Office of the Secretary, Room 5005, 14th Street and Constitution Avenue NW, Washington, DC 20230, (202) 482–3827.

9. Regional employees of NOAA, NIST, BIS, EDA, MBDA, ITA, NTIA, to the Human Resources Manager servicing the region or state in which they are employed, as follows:

a. *Central Region.* For NOAA employee-obligors in the states of: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin; for National Marine Fisheries Service employees in the states of North Carolina, South Carolina and Texas; and for National Weather Service employees in the states of Colorado, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming; for employee-obligors in the BIS, EDA, MBDA, and ITA in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin: Human Resources Manager, Central Administrative Support Center (CASC), Federal Building, Room 1736, 601 East 12th Street, Kansas City, MO 64106, (816) 426–2056.

b. *Eastern Region.* For NOAA employee-obligors in the states of: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Puerto Rico, and the Virgin Islands; for employee-obligors in the BIS, EDA, MBDA, and ITA in the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Puerto Rico, and the Virgin Islands: Human Resources Manager, Eastern Administrative Support Center (EASC), NOAA EC, 200 World Trade Center, Norfolk, VA 23510, (757) 441–6517.

c. *Mountain Region.* For NOAA employee-obligors in the states of: Alaska, Colorado, Florida, Hawaii, Idaho, and Oklahoma, at the South Pole and in American Samoa; and for the National Weather Service employees in the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, Texas and in Puerto Rico; for employee-obligors in BIS, EDA, MBDA, NIST, and NTIA in the states of Arkansas, Colorado, Hawaii, Iowa, Louisiana, Missouri, Montana, South Dakota, Texas, Utah and Wisconsin: Human Resources Office, Mountain Administrative Support Center (MASC), MC22A, 325 Broadway, Boulder, CO 80303–3328, (303) 497–3578.

d. *Western Region.* For NOAA employee-obligors in the states of Arizona, California, Montana, Nevada, Oregon, Utah, Washington, and the Trust Territories; for employee-obligors in BIS, EDA, MBDA, and ITA in the states of Arizona, California, Nevada, Oregon, Utah, Washington, and the Trust Territories: Human Resources Manager, Western Administrative Support Center (WASC), NOAA WC2, 7600 Sand Point Way NE, Bin C15700, Seattle, WA 89115–0070, (206) 526–6057.

10. *In cases where the name of the operating unit cannot be determined:* Director for Human Resources Management, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Room 5001, (202) 482–4807.

11. *For employee-obligors employed by bureaus serviced by Enterprise Services (BIS, EDA, ITA, MBDA, NOAA, NTIA, and O/S):* Enterprise Services Human Resource Service Center, 8400 Corporate Drive, Suite 300, Landover, MD 20785, (888) 316–2285.

Department of Defense

Unless specifically listed below, all military members (active, retired, reserve, and national guard), and all civilian employees of the Department of Defense: Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

Army

a. *Civilian employees in Germany:* Commander, 266th Theater Finance Corps, Attention: AEUCF–CPF, Unit 29001, APO AE 09007, 011–49–6221–57–7977/6044.

b. Non-appropriated fund civilian employees of the Army:

Post Exchanges

Department of Defense. Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

Navy

a. *Military Sealift Command Pacific Mariners:* Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

b. *Military Sealift Command Atlantic Mariners:* Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

c. *Non-appropriated fund civilian employees of Navy Exchanges or related non-appropriated fund instrumentalities administered by the Navy Exchange Service Command:* Chief Executive Officer, Navy Exchange Service Command, ATTN: Office of Counsel, 3280 Virginia Beach Blvd., Virginia Beach, VA 23452–5724, (757) 631–3617.

d. *Non-appropriated fund civilian employees at Navy clubs, messes or recreational facilities:* Chief of Navy Personnel, Director, Morale, Welfare, and Recreation Division (MWR), Washington, DC 20370, (202) 433–3005.

e. Non-appropriated fund personnel of activities that fall outside the purview of the Chief of Navy Personnel or the Chief Executive Officer of the Navy Exchange Service Command, such as locally established morale, welfare and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

Marine Corps

Non-appropriated fund civilian employees, process may be served on the commanding officer of the activity concerned.

Air Force

a. *Non-appropriated fund civilian employees of base exchanges:* Army and Air Force Exchange Service, Attention: FA–F/R, P.O. Box 650038, Dallas, TX 75265–0038, (214) 312–2119.

b. *Non-appropriated fund civilian employees of all other Air Force non-appropriated fund activities:* Office of Legal Counsel, Air Force Services Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216–4138, (210) 652–7051.

Department of Education

Assistant Secretary, Office of Finance and Operations, Lyndon Baines Johnson Building—2nd Floor, 400 Maryland Avenue SW, Washington, DC 20202, (202) 401–3000.

Department of Energy

Garnishment orders for civilian employees of the Department of Energy, other than those employed by the Bonneville Power Administration (BPA) and the Federal Energy Regulatory Commission (FERC), should be sent to: Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

Garnishment orders for civilian employees of BPA and FERC should be sent to the addresses below:

Bonneville Power Administration

Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 NE 11th Avenue, Portland, OR 97232, (503) 230–3203.

Federal Energy Regulatory Commission

Payroll Office, 888 First Street NE, Washington, DC 20246, (202) 502–8990.

Department of Health and Human Services

Garnishment orders for civilian employees of the Department of Health and Human Services should be sent to: Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

Department of Homeland Security

For Department of Homeland Security Headquarters employees: Office of the Chief Human Capital Officer, HRMS/Payroll and Processing/Mailstop 0170, Department of Homeland Security, 6595 Springfield Center Drive, Springfield, VA 20598–0170.

U.S. Citizenship and Immigration Services

Financial Operations Center—Payroll, United States Citizenship and Immigration Services, 70 Kimball Avenue South Burlington, VT 05403, (802) 657–7860.

United States Coast Guard

Commanding Officer (LGL), Coast Guard Pay and Personnel Center, 444 SE Quincy Street, Topeka, KS 66683–3591, (785) 339–3595.

U.S. Customs and Border Protection

Chief, Payroll Branch, Finance and Accounting Division, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278, (317) 298–1305.

Cybersecurity and Infrastructure Security Agency

Unless an alternative means of service is specified at *https://www.cisa.gov/contact-us,* deliver service of process to: Office of the Chief Counsel, CISA–NGR STOP 0645 Cybersecurity and Infrastructure Security Agency, 1110 N Glebe Rd., Arlington, VA 20598–0645. To aid in prompt handling, parties are encouraged to also email a copy to *CISA.OCC@cisa.dhs.gov.*

Federal Emergency Management Agency

Director, Payroll and Processing Division, Office of the Chief Human Capital Officer, 500 C St. SW, Washington, DC 20472, (866) 896–8003.

Federal Law Enforcement Training Center

Chief Counsel, 1131 Chapel Crossing Road, Building 93, Glynco, GA 31524, (912) 267–244.

United States Immigration and Customs Enforcement

Office of Human Capital, Payroll Unit, 8222 N Belt Line Road, 2nd Floor, Irving, TX 75063.

United States Secret Service

U.S. Secret Service, 245 Murray Ln SW—BLDG T–5, Washington, DC 20223, (202) 406–5708.

Transportation Security Administration

TSA HR Service Center, 6363 Walker Lane, Suite #400, Alexandria, VA 22310.

Department of Housing and Urban Development

Director, Systems Support Division, Employee Service Center, 451 7th Street SW, Room 2284, Washington, DC 20410, (202) 708–0241.

Department of the Interior

Chief, Payroll Operations Division, Attn: Code D–2605, Interior Business Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

Department of Justice

Antitrust Division

Executive Office, Personnel Section 450 5th Street NW, Room 3100, Washington, DC 20530, (202) 415–4163.

Bureau of Alcohol, Tobacco, Firearms and Explosives

Human Resources and Professional Development, 99 New York Ave. NE, Washington, DC 20226, (202) 344–5608.

Bureau of Prisons (All Facilities)

Human Resource Services Center, 346 Marine Forces Drive, Grand Prairie, TX 75051, (202) 235–7824.

Civil Division

Office of Human Resources, 1100 L Street NW, Room 2034, Washington, DC 20530, (202) 616–0353.

Civil Rights Division

Office of Human Resources and Security, 150 M Street NE, Room 6.1408, Washington, DC 20530, (202) 514–3934.

Criminal Division

Office of Administration, 1400 New York Ave. NW, 6th Floor, Room 629, Washington, DC 20005, (202) 514–0361.

Drug Enforcement Administration

Compensation, Benefits and Processing Section, 8701 Morrissette Drive, HR/HRS, Springfield, VA 22152, (571) 776–2821.

Environment & Natural Resources Division

150 M Street NE, Room 2.1142, Washington, DC 20530, (202) 616–3359.

Executive Office for Immigration Review

Office of Human Resources, 5107 Leesburg Pike, 19th Floor, (703) 756–8061.

Executive Office for United States Attorneys

Human Resources, 175 N Street NE, Washington, DC 20530, (202) 252–5324.

Federal Bureau of Investigations

Human Resources Division, Payroll Management Unit, 935 Pennsylvania Avenue NW, Room 10997, Washington, DC 20535, (202) 324–3333.

Justice Management Division (for All DOJ Components Not Otherwise Listed)

JMD Human Resources Operations/Payroll, 145 N Street NE, Room 9W.1425, Washington, DC 20530, (202) 616–9008.

Office of Justice Programs

Office of Administration, Human Resources Division, 810 7th Street NW, Room 3300, Washington, DC 20531, (202) 307–0730.

Office of the Inspector General

M&P Office of Human Resources, 150 M Street, Suite 11.000, Washington, DC 20530, (202) 616–4522.

Tax Division

150 M Street NE, Suite 1.1330, Washington, DC 20530, (202) 616–1762.

U.S. Marshals Service

Human Resources Division, Office of Compensation, Benefits, and Processing, CG3 4th Floor, Room 4030, Arlington, VA 22202, (703) 740–1714.

Department of Labor

1. *Payments to employees of the Department of Labor:* Division Director, Office of Compensation and Processing, Department of Labor, 200 Constitution Avenue NW, N–4654, Washington, DC 20210, (202) 693–6856.

2. *Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoreman's Act should be directed to the:* Associate Director for Longshore and Harbor Worker's Compensation, Department of Labor, 200 Constitution Avenue NW, C–3516, Washington, DC 20210, (202) 219–8721.

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the Office of Workers' Compensation Programs:

DFELHWC—FECA

Fiscal Operations, Office of Workers' Compensation Programs, 2300 Main Street, Suite 10128, Kansas City, MO 64108–2416, (202) 513–6860.

Department of State

The Executive Office, Office of the Legal Adviser, Suite 5.600, Department of State, 600 19th Street NW, Washington, DC 20522.

Department of Transportation

Office of the Secretary

Assistant General Counsel for Litigation and Enforcement, C–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W94–310, Washington, DC 20590, (202) 366–4713.

Federal Aviation Administration

Chief, Payroll Operations Division, Attn: Code D–2605, Interior Business Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

Department of the Treasury

(1) Departmental Offices

Office of Human Resources, Treasury Department, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–0450.

(2) Office of Foreign Assets Control

Chief Counsel, Second Floor, Treasury Annex/Freedman's Bank Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–2410.

(3) Bureau of the Fiscal Service

Human Capital Division, Room A4–H, Bureau of the Fiscal Service, P.O. Box 1328, Parkersburg WV 26106–1328, (304) 480–8303.

(4) Internal Revenue Service

Austin Payroll Center, P.O. Box 9002, Beckley, WV 25802–9002, (304) 254–5940.

(5) Alcohol and Tobacco Tax and Trade Bureau

Bureau of the Fiscal Service, Attention: Accounting Services Branch 2 Avery Street A3–G, P.O. Box 1328, Parkersburg, WV 26106–1328.

(6) Financial Crimes Enforcement Network (FinCEN)

Office of Human Resources, 2070 Chain Bridge Road, G99, Vienna, VA 22182, (703) 905–3591.

(7) Office of the Inspector General

Office of Human Resources, 875 15th Street NW, Suite 200, Washington, DC 20220, 202–927–5200.

(8) Special Inspector General for Pandemic Recovery

2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314, (202) 695–0753.

(9) Special Inspector General for the Troubled Asset Relief Program (SIGTARP)

HR Office, 14509 Delcastle Dr., Bowie, MD 20721, (202) 538–4647, *SIGTARPCareers@treasury.gov.*

(10) Treasury Inspector General for Tax Administration

Bureau of Fiscal Service, Administrative Resource Center, Room A2–A, P.O. Box 1328, Parkersburg, WV 26106–1328, (304) 480—8000 Option 4, *tigtaHRProcessing@fiscal.treasury.gov,* Fax: (304) 480—8295.

(11) Bureau of Engraving & Printing

Chief Counsel, 14th & C Streets NW, Room 306M, Washington, DC 20228, (202) 874–2500.

(12) Office of the Comptroller of the Currency

Washington Headquarters

Director of Litigation, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219–0001, (202) 649–5400.

District Offices

District Counsel-Northeast, Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor, New York, NY 10173, (212) 790–4000.

District Counsel-Southern, Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201–3323, (214) 720–0656.

District Counsel-Central, Office of the Comptroller of the Currency, 425 South Financial Place, Suite 1700, Chicago, IL 60605–1073, (312) 360–8800.

District Counsel-Western, Office of the Comptroller of the Currency, 1050 17th Street, Suite 1500, Denver, CO 80265–1050, (720) 475–7600.

(13) United States Mint

Chief Counsel, 801 Ninth Street NW, Washington, DC 20220, (202) 756–6468.

Department of Veterans Affairs

Garnishment orders for civilian employees of the Department of Veterans Affairs should be sent to: Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411 (Those parties seeking offset of Veteran benefit payments pursuant to court and/or child support enforcement orders should contact the Veterans Benefits Administration at 1–800–827–1000 or *https.www.benefits.va.gov/benefits/offices.asp* for the appropriate service address of the Veterans Affairs Regional Office corresponding to the debtor's legal domicile).

Social Security Administration

1. *For the garnishment of the remuneration of employees:* Garnishment Agent, Office of the General Counsel, Room 611, Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–4202.

Effective March 30, 1998, garnishment orders for employees of the Social Security Administration should be sent to: Chief, Payroll Operations Division, Attn.: Code D–2640, Bureau of Reclamation, Administrative Services Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

II. Agencies

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Agency for International Development

For employees of the Agency for International Development: Chief, Payroll Division, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523, (202) 916–4405, (202) 916–4956 (fax), *payroll@usaid.gov.*

Central Intelligence Agency

Office of Personnel Security, Attn: Chief, Special Activities Staff, Washington, DC 20505, (703) 482–1217.

Commission on Civil Rights

Solicitor, Commission on Civil Rights, 624 9th Street NW, Suite 632, Washington, DC 20425, (202) 376–8351.

Commodity Futures Trading Commission

Director, Office of Personnel, Commodity Futures Trading Commission, Three Lafayette Center, Room 7200, 1155 21st Street NW, Washington, DC 20581, (202) 418–5003.

Consumer Financial Protection Bureau

General Counsel, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552, (202) 435–5206.

Consumer Product Safety Commission

(Mail Service), General Counsel, Consumer Product Safety Commission, Washington, DC 20207–0001, (202) 504–0980.

(Personal Service), General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Room 700, Bethesda, MD 20814–4408, (301) 504–0980.

Council of the Inspectors General on Integrity and Efficiency

Interior Business Center, Department of the Interior, Chief, Payroll Operations Division, ATTN: D–2640, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

Environmental Protection Agency

Department of the Interior, Interior Business Center, Debt Management Branch Attention: D–2640, 7201 W Mansfield Avenue, Denver, CO 80235, (866) 367–1272.

Export-Import Bank of the United States

General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue NW, Room 947, Washington, DC 20571, (202) 566–8334.

Equal Employment Opportunity Commission

Director, Finance and Systems Services Division, Room 4SE09E, 131 M Street NE, Washington, DC 20507, (202) 921–2869.

Farm Credit Administration

Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4122.

Federal Deposit Insurance Corporation

Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429, (202) 898–3686.

Federal Election Commission

Accounting Officer, Federal Election Commission, 999 E Street NW, Washington, DC 20463, (202) 376–5270.

Federal Labor Relations Authority

Director of Personnel, Federal Labor Relations Authority, 607 14th Street NW, Suite 430, Washington, DC 20424, (202) 482–6690.

Federal Maritime Commission

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573, (202) 523–5773.

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW, Washington, DC 20427, (202) 653–5305.

Federal Retirement Thrift Investment Board

Payments to Board employees: Director of Administration, Federal Retirement Thrift Investment Board, 1250 H Street NW, Washington, DC 20005, (202) 942–1670.

Benefits from the Thrift Savings Fund: General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street NW, Washington, DC 20005, (202) 942–1662.

Federal Trade Commission

Garnishment orders for employees of the Federal Trade Commission should be sent to: Chief, Payroll Operations Division, Attn.: Code D–2605, Bureau of Reclamation, Administrative Services Center, Department of the Interior, 7201 West Mansfield Avenue, Denver, CO 80227–9030, (303) 969–7739.

General Services Administration

Director, Kansas City Finance Division—6BC, 1500 East Bannister Road—Room 1107, Kansas City, MO 64131, (816) 926–7625.

Harry S. Truman Scholarship Foundation

Chief, Payroll Operations Division, Attention: Mail Code 2640, National Business Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

Institute of Peace

Garnishment orders for employees of the Institute of Peace should be sent to: General Services Administration, Director, Finance Division—(6BC), 1500 E Bannister Road, Room 1107, Kansas City, MO 64131, (816) 926–1666.

International Trade Commission

Director, Office of Finance and Budget, 500 E Street SW, Suite 316, Washington, DC 20436, (202) 205–2678.

Merit Systems Protection Board

Director, Financial and Administrative Management Division, 1615 M Street NW, Washington, DC 20419, (202) 653–7263.

National Aeronautics and Space Administration

Interior Business Center, Department of the Interior, Chief, Payroll Operations Division, ATTN: D–2640, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

National Archives and Records Administration

General Counsel (NGC), National Archives and Records Administration, Suite 3110, 8601 Adelphi Road, College Park, MD 20740, 301–837–1750.

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street NW, Washington, DC 20576, (202) 724–0170.

National Credit Union Administration

General Counsel, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428, (703) 518–6540.

National Endowment for the Arts

General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Room 522, Washington, DC 20506, (202) 682–5418.

National Endowment for the Humanities

General Counsel, National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue NW, Washington, DC 20506, (202) 606–8322.

National Labor Relations Board

Director of Personnel, National Labor Relations Board, 1099 14th Street NW, Room 6700, Washington, DC 20570–0001, (202) 273–3904.

National Mediation Board

Administrative Officer, National Mediation Board, 1301 K Street NW, Suite 250 East, Washington, DC 20572, (202) 523–5950.

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 175 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7300.

National Science Foundation

Human Resources Management, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, (703) 292–5111.

National Security Agency

General Counsel, National Security Agency, 9800 Savage Road, Ft. Meade, MD 20755–6000, (301) 688–6054.

National Transportation Safety Board

Director, Personnel and Training Division, National Transportation Safety Board, ATTN: AD–30, 800 Independence Avenue SW, Washington, DC 20594, (202) 382–6718.

Navajo and Hopi Indian Relocation Commission

Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779–2721.

Nuclear Regulatory Commission

Comptroller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–0667.

Office of Personnel Management

Payments to OPM employees: Human Resources, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System: Court Ordered Benefits Branch, ATTN: Garnishments, Office of Personnel Management, P.O. Box 17, Washington, DC 20044–0017, (202) 606–0222.

Overseas Private Investment Corporation

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527, (202) 336–8524.

Panama Canal Commission

Secretary, Office of the Secretary, International Square, 1825 I Street NW, Suite 1050, Washington, DC 20006–5402, (202) 634–6441.

Pension Benefit Guaranty Corporation

Associate General Counsel, 445 12th Street SW, Washington, DC 20024, (202) 229–4400.

Presidio Trust

Chief, Payroll Operations Division, Attention: Mail Code 2640, National Business Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

Railroad Retirement Board

General Counsel, 844 North Rush Street, Chicago, IL 60611, (312) 751–4948.

Securities and Exchange Commission

Branch Chief, Employee Services, Office of Human Resources, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, (202) 551–7500.

Selective Service System

General Counsel, 1515 Wilson Boulevard, Arlington, VA 22209–2425, (703) 235–2050.

Small Business Administration

District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254–1344.

District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271–4022.

District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261–3611.

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 378–5871.

District Director, Los Angeles District Office, 350 S Figueroa Street, Los Angeles, CA 90071, (213) 688–2956.

District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 291–5440.

District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556–7490.

District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837–2607.

District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06106, (203) 244–3600.

District Director, Washington District Office, 1030 15th Street NW, Washington, DC 20417, (202) 655–4000.

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791–3782.

District Director, Miami District Office, 222 Ponce de Leon Blvd., Coral Gables, FL 33134, (305) 350–5521.

District Director, Atlanta District Office, 1720 Peachtree Street NW, Atlanta, GA 30309, (404) 347–2441.

District Director, Honolulu District Office, 300 Ala Moana Blvd., Honolulu, HI 96850, (808) 546–8950.

District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384–1096.

District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4433.

District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 353–4528.

District Director, Indianapolis District Office, 575 N Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7272.

District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267–6571.

District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201, (502) 582–5978.

District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589–6685.

District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622–6171.

District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204, (301) 862–4392.

District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114, (617) 223–2100.

District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48116, (313) 226–6075.

District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402, (612) 725–2362.

District Director, Jackson District Office, 101 West Capitol Street, Suite 400, Jackson, MS 39201, (601) 965–5371.

District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106, (816) 374–3416.

District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425–4191.

District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381.

District Director, Omaha District Office, 19th & Farnam Streets, Omaha, NE 68102, (404) 221–4691.

District Director, Las Vegas District Office, 301 East Stewart Avenue, Las Vegas, NV 89101, (702) 385–6611.

District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224–4041.

District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102, (201) 645–2434.

District Director, Albuquerque District Office, 5000 Marble Avenue NE, Albuquerque, NM 87110, (505) 766–3430.

District Director, New York District Office, 26 Federal Plaza, New York, NY 10007, (212) 264–4355.

District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260, (315) 423–5383.

District Director, Charlotte District Office, 230 South Tryon Street, Charlotte, NC 28202, (704) 371–6111.

District Director, Fargo District Office, 657 2nd Avenue North, Fargo, ND 58108, (701) 237–5771.

District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, SD 57102, (605) 336–2980.

District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4180.

District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215, (614) 469–6860.

District Director, Oklahoma City District Office, 200 NW 5th Street, Oklahoma City, OK 73102, (405) 231–4301.

District Director, Portland District Office, 1220 SW Third Avenue, Portland, OR 97204, (503) 221–2682.

District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004, (215) 597–3311.

District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–2780.

District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918, (809) 753–4572.

District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903, (401) 528–4580.

District Director, Columbia District Office, 1835 Assembly Street, Columbia, SC 29201, (803) 765–5376.

District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219, (615) 251–5881.

District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242, (214) 767–0605.

District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002, (713) 226–4341.

District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550, (512) 423–4534.

District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7466.

District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (512) 229–6250.

District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425–5800.

District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229–0538.

District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782–2617.

District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442–5534.

District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456–5310.

District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301, (304) 623–5631.

District Director, Madison District Office, 212 East Washington Avenue, Madison, WI 53703, (608) 264–5261.

District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265–5266.

Tennessee Valley Authority

Payments to TVA employees: Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (423) 632–2101.

Payments of retirement benefits under the TVA Retirement System: Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (423) 632–0202.

Trade and Development Agency

Effective August 3, 1998, garnishment orders for employees of the United States Trade and Development Agency should be sent to: Chief, Payroll Operations Division, Attn.: Code D–2640, Bureau of Reclamation, Administrative Services Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

United States Soldiers' & Airmen's Home

Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

III. United States Postal Service and Postal Regulatory Commission

United States Postal Service and Postal Regulatory Commission

Manager, Payroll Operations, 2825 Lone Oak Parkway, Eagan, MN 55121–0650, (651) 406–3600.

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th Street and Pennsylvania Avenue NW, Washington, DC 20004, (202) 727–6979.

American Samoa

Director of Administrative Service, American Samoa government, Pago Pago, American Samoa 96799, (684) 633–4155.

Guam

Attorney General, P.O. Box DA, Agana, Guam 96910, 472–6841 (Country Code 671).

The Virgin Islands

Attorney General, P.O. Box 280, St. Thomas, VI 00801, (809) 774–1163.

V. Instrumentality

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees: Controller, Office of Finance and Accounting, Smithsonian Institution, P.O. Box 37012 MRC 1203, Washington, DC 20013–7012, (202) 633–7250

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution: General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490–9000

VI. Executive Office of the President

Executive Office of the President

Garnishment orders for civilian employees of the Executive Office of the President should be sent to: Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

■ 3. The authority citation for part 582 continues to read as follows:

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897; Sec. 582.102 also issued under 5 U.S.C. 8336a and 8412a.

■ 4. Appendix A to part 582 is revised to read as follows:

Appendix A to Part 582—List of Agents Designated To Accept Legal Process

Note: The agents designated to accept legal process are listed in appendix A to part 581 of this chapter. This appendix provides listings only for those executive agencies where the designations differ from those found in appendix A to part 581.

I. Departments

Department of Defense. Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

Agents for receipt of all legal process for all Department of Defense civilian employees except where another agent has been designated as set forth below.

For requests that apply to employees of the Army and Air Force Exchange Service or to civilian employees of the Defense Contract Audit Agency (DCAA) and the Defense Logistics Agency (DLA) who are employed outside the United States: See appendix A to part 581 of this chapter.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, serve the following offices:

Civilian employees of the Army Corps of Engineers. Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

Army Non-Appropriated Fund Employees in Europe. Defense Finance and Accounting Service, Office of General Counsel, Attn: Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH 44199–8002, Fax: 216–367–3675; Toll-Free Fax: 877–622–5930, Phone: 888–332–7411.

National Security Agency. General Counsel, National Security Agency/Central Security Service, 9800 Savage Rd., Ft. George G. Meade, MD 20755–6000, (301) 688–6705.

Defense Intelligence Agency. Office of General Counsel, Defense Intelligence Agency, Pentagon, 2E238, Washington, DC 20340–1029, (202) 697–3945.

Air Force Non-Appropriated Fund Employees. Office of General Counsel, Air Force Services Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216–4138, (210) 652–7051.

For civilian employees of the Army, Navy and Marine Corps who are employed outside the United States, serve the following offices:

Army Civilian Employees in Europe. Commander, 266th Theater Finance Command, ATTN: AEUCF–CPF, APO AE 09007–0137, 011–49–6221–57–6303/2136, DSN 370–6303/2136.

Army Civilian Employees in Japan. Commander, U.S. Army Finance and Accounting Office, Japan, ATTN: APAJ–RM–FA–E–CP, Unit 45005, APO AP 96343–0087, DSN 233–3362.

Army Civilian Employees in Korea. Commander, 175th Finance and Accounting Office, Korea, ATTN: EAFC–FO (Civilian Pay), Unit 15300, APO AP 96205–0073, 011–822–791–4599, DSN 723–4599.

Army Civilian Employees in Panama. DCSRM Finance & Accounting Office, ATTN: SORM–FAP–C, Unit 7153, APO AA 34004–5000, 011–507–287–6766, DSN 287–5312.

Navy and Marine Corps Civilian Employees Overseas. Director of the Office of Civilian Personnel Management, Office of Counsel, Office of Civilian Personnel Management (OCPM–OL), Department of the Navy, 800 N. Quincy Street, Arlington, VA 22203–1990, (703) 696–4717.

Navy and Marine Corps Non-Appropriated Fund Employees. The agents are the same as those designated to receive garnishment orders of Navy and Marine Corps non-appropriated fund personnel for the collection of child support and alimony, published at 5 CFR part 581, appendix A, except as follows:

For non-civil service civilian personnel of Marine Corps non-appropriated fund instrumentalities, process may be served on the Commanding Officer of the employing activity, ATTN: Morale, Welfare and Recreation Director.

Department of the Interior. Chief, Payroll Operations Division, Attn: Code: D–2605, Bureau of Reclamation, Administrative Service Center, Department of the Interior, P.O. Box 272030, 7201 West Mansfield Avenue, Denver, CO 80227–9030, (303) 969–7739.

[FR Doc. 2023–10496 Filed 5–18–23; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–1042; Special Conditions No. 25–804–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Electronic Flight-Control System and Control Surface Position Awareness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 6X airplane. This airplane 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 an electronic flight-control system requiring flight-control surface position awareness. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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: This action is effective on Dassault on May 19, 2023. Send comments on or before July 3, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2020–1042 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.

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 this Notice. Send submissions containing CBI to Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S. Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

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: Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

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 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. The FAA may change these special conditions based on the comments received.

Background

On July 1, 2012, Dassault Aviation applied for a type certificate for their new Model Falcon 5X airplane. However, Dassault has decided not to release an airplane under the model designation Falcon 5X, instead choosing to change that model designation to Falcon 6X.

In February of 2018, due to engine supplier issues, Dassault extended the type certificate application date for their Model Falcon 5X airplane under new Model Falcon 6X. This airplane is a twin-engine business jet with seating for 19 passengers, and has a maximum takeoff weight of 77,460 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.17, Dassault must show that the Model Falcon 6X airplane meets the applicable provisions of part 25, as amended by amendments 25–1 through 25–146.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 6X airplane 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, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 6X airplane 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 § 21.17(a)(2).

Novel or Unusual Design Features

The Dassault Model Falcon 6X airplane will incorporate the following novel or unusual design feature: An electronic flight-control system (EFCS) and no direct coupling from the flight deck controller to the control surface.

Discussion

As a result of the EFCS and lack of direct coupling from the flight deck controller to the control surface, the pilot is not aware of the actual control surface position. Some unusual flight conditions, arising from atmospheric conditions and/or airplane or engine failures, may result in full or nearly full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner to cause loss of control or other unsafe stability or performance characteristics. The airworthiness standards do not contain adequate or appropriate safety standards for the conditions that result from the EFCS and lack of direct coupling from the flight deck controller to the control surface.

To establish a level of safety equivalent to that established in the regulations, these special conditions are established. These special conditions require that the flightcrew receive suitable flight-control position annunciation when a condition exists in which nearly full surface authority (not crew commanded) is being utilized. Suitability of such an alerting must take into account that some pilot-demanded maneuvers (*e.g.,* rapid roll) are necessarily associated with intended full performance, which may saturate the surface. Therefore, simple alerting systems, which would function in either intended or unexpected control-limiting situations, must be properly balanced between necessary crew awareness and unwanted nuisance factors. A monitoring system that might compare airplane motion, surface deflection, and pilot demand could be helpful in reducing nuisance alerting.

Additionally, these special conditions address flight control system mode annunciation. Suitable mode annunciation must be provided to the flightcrew for events that significantly change the operating mode of the system but do not merit the classic ''failure warning.''

These 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 special conditions are applicable to the Dassault Model Falcon 6X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. 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, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 6X airplane.

In addition to compliance with §§ 25.143, 25.671, 25.672, and 25.1322, the following special conditions apply:

1. The system design must ensure that the flightcrew is made suitably aware whenever the primary control means nears the limit of control authority.

Note: the term ''suitably aware'' indicates annunciations provided to the flightcrew are appropriately balanced between nuisance and that necessary for crew awareness.

2. If the flight-control system has multiple modes of operation, the system must alert the flight crew when the airplane enters any mode that significantly changes or degrades the normal handling or operational characteristics of the airplane.

Issued in Kansas City, Missouri, on May 10, 2023.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023–10593 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0653; Project Identifier AD–2023–00280–E; Amendment 39–22429; AD 2023–09–06]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all CFM International, S.A. (CFM) LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, and LEAP–1A35A (LEAP–1A) model turbofan engines. This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) rotor stage 1 disks (HPT stage 1 disks), forward outer seals, and compressor rotor stages 6–10 spools were manufactured from material suspected to have reduced material properties due to iron inclusion. This AD requires replacement of certain HPT stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 23, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 23, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2023–0653; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference

- For service information identified in this final rule, contact CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov by searching for and locating Docket No. FAA–2023–0653.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all CFM LEAP–1A model turbofan engines. The NPRM published in the **Federal Register** on March 24, 2023 (88 FR 17753). The NPRM was prompted by notification from the manufacturer that iron inclusion was detected in three non-LEAP–1A HPT rotor disks. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain CFM LEAP–1A HPT stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and subsequent uncontained failure of certain HPT stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools. In the NPRM, the FAA proposed to require replacement of certain HPT stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools. The FAA also proposed to prohibit installation of an HPT stage 1 disk, forward outer seal, or compressor rotor stages 6–10 spool that has a part number and serial number identified in the service information onto any engine. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Additional Changes Made to This Final Rule

Since the NPRM published, the FAA determined the need to change a part name in the final rule from ''stages 6–10 compressor rotor spool'' to ''compressor rotor stages 6–10 spool,'' to make the nomenclature consistent with the service information. The FAA has revised this final rule to incorporate this change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information issued by CFM, which identify the part numbers and serial numbers of HPT stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools with potentially reduced material properties and specify procedures for replacement of these parts. These documents are distinct since they apply to different engine serial numbers.

- Service Bulletin LEAP–1A–72–00–0470–01A–930A–D, Issue 003, dated March 3, 2023.
- Service Bulletin LEAP–1A–72–00–0493–01A–930A–D, Issue 002, dated November 17, 2022.
- Service Bulletin LEAP–1A–72–00–0496–01A–930A–D, Issue 001, dated March 7, 2023.

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

Costs of Compliance

The FAA estimates that this AD affects 38 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT stage 1 disk (38 affected parts).	8 work-hours × $85 per hour = $680.	$215,635 (pro-rated)	$216,315	$8,219,970
Replace forward outer seal (24 affected parts).	8 work-hours × $85 per hour = $680.	$47,500 (pro-rated)	48,180	1,156,320
Replace compressor rotor stages 6–10 spool (15 affected parts).	8 work-hours × $85 per hour = $680.	$37,660 (pro-rated)	38,340	575,100

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–09–06 CFM International, S.A.: Amendment 39–22429; Docket No. FAA–2023–0653; Project Identifier AD–2023–00280–E.

(a) Effective Date

This airworthiness directive (AD) is effective June 23, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, and LEAP–1A35A model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain HPT stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools were manufactured from material suspected to have reduced material properties due to iron inclusion. The FAA is issuing this AD to prevent fracture and subsequent uncontained failure of certain high-pressure turbine (HPT) stage 1 disks, forward outer seals, and compressor rotor stages 6–10 spools. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) For engines with an installed HPT stage 1 disk, forward outer seal, or compressor rotor stages 6–10 spool having a part number (P/N) and serial number (S/N) identified in Compliance, paragraph 3.E., Tables 1 through 9, of CFM Service Bulletin (SB) LEAP–1A–72–00–0496–01A–930A–D, Issue 001, dated March 7, 2023 (CFM SB LEAP–1A–72–00–0496–01A–930A–D): At the next piece-part exposure of the HPT stage 1 disk, forward outer seal, or compressor rotor stages 6–10 spool, as applicable, or before exceeding the applicable cycles since new (CSN) threshold identified in Compliance, paragraph 3.E., Tables 1 through 9, of CFM SB LEAP–1A–72–00–0496–01A–930A–D, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 flight cycles (FCs) from the effective date of this AD; remove the HPT stage 1 disk, forward outer seal, or compressor rotor stages 6–10 spool, as applicable, from service and replace with a part eligible for installation.

(2) For engines with an installed forward outer seal having a P/N and S/N identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM SB LEAP–1A–72–00–0470–01A–930A–D, Issue 003, dated March 3, 2023 (CFM SB LEAP–1A–72–00–0470–01A–930A–D): At the next piece-part exposure of the forward outer seal, or before exceeding the applicable CSN threshold identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM SB LEAP–1A–72–00–0470–01A–930A–D, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 FCs from the effective date of this AD; remove the forward outer seal from service and replace with a part eligible for installation.

(3) For engines with an installed HPT stage 1 disk having a P/N and S/N identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM SB LEAP–1A–72–00–0493–01A–930A–D, Issue 002, dated November 17, 2022 (CFM SB LEAP–1A–72–00–0493–01A–930A–D): At the next piece-part exposure of the HPT stage 1 disk, or before exceeding the applicable CSN threshold identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM SB LEAP–1A–72–00–0493–01A–930A–D, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 FCs from the effective date of this AD; remove the HPT stage 1 disk from service and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is an HPT stage 1 disk, forward outer seal, or compressor rotor stages 6–10 spool that does not have a P/N and S/N identified in the service information listed in paragraphs (g)(1) through (3) of this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install an HPT stage 1 disk, forward outer seal, or compressor rotor stages 6–10 spool that has a P/N and S/N identified in the service information listed in paragraphs (g)(1) through (3) of this AD on any engine.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) CFM International, S.A. Service Bulletin LEAP–1A–72–00–0470–01A–930A–D, Issue 003, dated March 3, 2023.

(ii) CFM International, S.A. Service Bulletin LEAP–1A–72–00–0493–01A–930A–D, Issue 002, dated November 17, 2022.

(iii) CFM International, S.A. Service Bulletin LEAP–1A–72–00–0496–01A–930A–D, Issue 001, dated March 7, 2023.

(3) For service information identified in this AD, contact CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*

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

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

Issued on May 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–10763 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0824; Airspace Docket No. 23–ASO–14]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes administrative changes to the description of the Class D airspace and Class E airspace extending upward from 700 feet above the surface for Stanly County Airport, Albemarle, NC. This action does not change the airspace boundaries or operating requirements.

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: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments 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 update is an administrative change and does not change the airspace boundaries or operating requirements.

Incorporation by Reference

Class D and E airspace designations are published in paragraphs 5000 and 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 amendment to 14 CFR part 71 amends Class D airspace and Class E airspace extending upward from 700 feet above the surface for Stanly County Airport, Albemarle, NC, by updating the geographic coordinates for this airport to coincide with the FAA's database. This action would also replace Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the Class D airspace description. This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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 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

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 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 Federal Aviation Administration 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.

* * * * *

ASO NC D Albemarle, NC [Amended]

Stanly County Airport, NC

(Lat. 35°25′00″ N, long. 80°09′03″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 5.8-mile radius of the Stanly County Airport and 1.5 miles on each side of the 037° degree bearing from the airport, extending from the 5.8-mile radius to 7.8 miles northeast of the airport. 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Albemarle, NC [Amended]

Stanly County Airport, NC

(Lat. 35°25′00″ N, long. 80°09′03″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Stanly County Airport.

* * * * *

Issued in College Park, Georgia, on May 15, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–10694 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31489; Amdt. No. 572]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, June 15, 2023.

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 amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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 95

Airspace, Navigation (air).

Issued in Washington, DC, on May 15, 2023.

Thomas J. Nichols,

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, 15 June 2023.

PART 95—IFR ALTITUDES

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113 and 14 CFR 11.49(b)(2).

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 572 effective date June 15, 2023]

From	To	MEA
Color Routes		
§ 95.516 Green Federal Airway G16 Is Amended To Read in Part		
WAINWRIGHT VILLAGE, AK NDB	BROWERVILLE, AK NDB	2000
NUIQSUT VILLAGE, AK NDB	PUT RIVER, AK NDB	1700

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3216 RNAV Route T216 Is Amended To Read in Part			
PHILIPSBURG, PA VORTAC	WILLIAMSPORT, PA VOR/DME	4900	17500
WILLIAMSPORT, PA VOR/DME	ELEXY, PA WP	4900	17500
ELEXY, PA WP	LAAYK, PA FIX	*4900	17500
*4700—MCA LAAYK, PA FIX, W BND			
§ 95.3288 RNAV Route T288 Is Amended by Adding			
FESNT, NE WP	ISTIQ, NE WP	4400	17500
Is Amended To Delete			
FESNT, NE WP	WOLBACH, NE VORTAC	4300	17500
§ 95.3300 RNAV Route T300 Is Amended To Read in Part			
JONNN, NY FIX	UUBER, NY WP	*4500	17500
*5900—MCA UUBER, NY WP, S BND			
UUBER, NY WP	OPDIE, NY WP	*6400	17500
*6600—MCA OPDIE, NY WP, S BND			
§ 95.3306 RNAV Route T306 Is Amended To Read in Part			
BUCKEYE, AZ VORTAC	PERKY, AZ FIX	*5300	17500
*4900—MCA PERKY, AZ FIX, W BND.			
PERKY, AZ FIX	PHOENIX, AZ VORTAC	4400	17500

From	To	MEA	MAA
§ 95.3366 RNAV Route T366 Is Amended To Read in Part			
FILEV, AK WP	BARROW, AK VOR/DME	2000	17500
§ 95.4000 High Altitude RNAV Routes **§ 95.4101 RNAV Route Q101 Is Amended by Adding**			
TUGGR, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	KALDA, VA WP	*18000	45000
§ 95.4178 RNAV Route Q178 Is Added To Read			
DRYER, OH VOR/DME *18000—GNSS MEA *DME/DME/IRU MEA	LEJOY, PA FIX	*18000	45000
LEJOY, PA FIX *18000—GNSS MEA *DME/DME/IRU MEA	BALTIMORE, MD VORTAC	*18000	45000

From	To	MEA
§ 95.6001 VICTOR Routes–U.S. **§ 95.6001 VOR Federal Airway V1 Is Amended To Read in Part**		
WALLO, NC FIX	KINSTON, NC VORTAC	UNUSABLE
§ 95.6003 VOR Federal Airway V3 Is Amended To Read in Part		
ORMOND BEACH, FL VORTAC *1400—MOCA	BRUNSWICK, GA VORTAC	*5000
BRUNSWICK, GA VORTAC *2300—MOCA	KELER, GA FIX	*3000
§ 95.6008 VOR Federal Airway V8 Is Amended To Read in Part		
CHICAGO HEIGHTS, IL VORTAC	GOSHEN, IN VORTAC	2600
§ 95.6010 VOR Federal Airway V10 Is Amended To Read in Part		
KIRKSVILLE, MO VORTAC	BURLINGTON, IA VOR/DME	3000
CHETT, MI FIX *2200—MOCA	GIPPER, MI VORTAC	*3500
§ 95.6016 VOR Federal Airway V16 Is Amended To Read in Part		
BUCKEYE, AZ VORTAC *4900—MCA PERKY, AZ FIX, W BND	*PERKY, AZ FIX	5300
§ 95.6017 VOR Federal Airway V17 Is Amended To Read in Part		
GARDEN CITY, KS VORTAC *9000—MRA	*COFFE, KS FIX	5500
§ 95.6018 VOR Federal Airway V18 Is Amended To Read in Part		
SACKS, SC FIX *1600—MOCA	CHARLESTON, SC VORTAC	*3000
§ 95.6037 VOR Federal Airway V37 Is Amended To Read in Part		
BRUNSWICK, GA VORTAC *2300—MOCA	KELER, GA FIX	*3000
KELER, GA FIX *1900—MOCA	SAVANNAH, GA VORTAC	*3000
§ 95.6039 VOR Federal Airway V39 Is Amended To Read in Part		
BOYER, PA FIX	EAST TEXAS, PA VOR/DME	3000
EAST TEXAS, PA VOR/DME	SPARTA, NJ VORTAC	3000
§ 95.6044 VOR Federal Airway V44 Is Amended To Read in Part		
BENDS, WV FIX *4600—MCA MORGANTOWN, WV VOR/DME, E BND	*MORGANTOWN, WV VOR/DME	4000
MORGANTOWN, WV VOR/DME	KEYER, WV FIX	5400

From	To	MEA
KEYER, WV FIX	MARTINSBURG, WV VORTAC	5000

§ 95.6050 VOR Federal Airway V50 Is Amended To Delete

From	To	MEA
KIRKSVILLE, MO VORTAC	QUINCY, IL TACAN	2700
QUINCY, IL TACAN *2100—MOCA	SPINNER, IL VORTAC	*3000

§ 95.6051 VOR Federal Airway V51 Is Amended To Delete

From	To	MEA
CRAIG, FL VORTAC *1700—MOCA *4000—GNSS MEA	ALMA, GA VORTAC	*5000
ALMA, GA VORTAC *2000—GNSS MEA	DUBLIN, GA VORTAC	*3000
DUBLIN, GA VORTAC *2200—MOCA	ATHENS, GA VOR/DME	*3000
ATHENS, GA VOR/DME	IRMOS, GA FIX	3100
IRMOS, GA FIX	CORCE, GA FIX	3800
CORCE, GA FIX	TALLE, GA FIX	5300
TALLE, GA FIX	HARRIS, GA VORTAC	7000
HARRIS, GA VORTAC	ETOWA, TN FIX	7000
ETOWA, TN FIX	HINCH MOUNTAIN, TN VOR/DME	5000

Is Amended To Read in Part

From	To	MEA
ORMOND BEACH, FL VORTAC	CRAIG, FL VORTAC	2100

§ 95.6052 VOR Federal Airway V52 Is Amended To Delete

From	To	MEA
OTTUMWA, IA VOR/DME	QUINCY, IL TACAN	2600
QUINCY, IL TACAN	RIVRS, IL WP	2600
RIVRS, IL WP	ST LOUIS, MO VORTAC	2600

§ 95.6063 VOR Federal Airway V63 Is Amended To Delete

From	To	MEA
HALLSVILLE, MO VORTAC	QUINCY, IL TACAN	2900
QUINCY, IL TACAN	BURLINGTON, IA VOR/DME	2600

§ 95.6067 VOR Federal Airway V67 Is Amended To Read in Part

From	To	MEA
BURLINGTON, IA VOR/DME	IOWA CITY, IA VOR/DME	2600

§ 95.6074 VOR Federal Airway V74 Is Amended To Read in Part

From	To	MEA
OWETA, OK FIX *2000—MOCA	MALTS, OK FIX	*2800
MALTS, OK FIX *3100—MOCA	FORT SMITH, AR VORTAC	*4000

§ 95.6092 VOR Federal Airway V92 Is Amended To Read in Part

From	To	MEA
CHICAGO HEIGHTS, IL VORTAC	GOSHEN, IN VORTAC	2600

§ 95.6097 VOR Federal Airway V97 Is Amended To Read in Part

From	To	MEA
MELLS, GA FIX *7400—GNSS MEA	OLBUE, TN FIX	*10000
OLBUE, TN FIX *7000—MRA *6900—MCA HINDE, TN FIX, S BND	*HINDE, TN FIX	7400

§ 95.6099 VOR Federal Airway V99 Is Amended To Read in Part

From	To	MEA
LA GUARDIA, NY VOR/DME *1900—MOCA	OUTTE, CT FIX	*4000
OUTTE, CT FIX *2700—MOCA	SORRY, CT FIX	*4000

§ 95.6115 VOR Federal Airway V115 Is Amended To Delete

From	To	MEA
VULCAN, AL VORTAC	CHOO CHOO, TN DME	4000
CHOO CHOO, TN DME	ETOWA, TN FIX	3000

From	To	MEA
Is Amended by Adding		
VULCAN, AL VORTAC	BOAZE, TN FIX	4000
DUBBS, TN FIX	ETOWA, TN FIX	3000
§ 95.6119 VOR Federal Airway V119 Is Amended To Delete		
PARKERSBURG, WV VOR/DME	ANTIO, OH FIX	3000
ANTIO, OH FIX	INDIAN HEAD, PA TACAN	5000
§ 95.6126 VOR Federal Airway V126 Is Amended To Delete		
BEARZ, IN WP	HALIE, IN FIX	3000
HALIE, IN FIX	INKEN, IN FIX	*4000
*2300—MOCA		
INKEN, IN FIX	GOSHEN, IN VORTAC	2600
§ 95.6132 VOR Federal Airway V132 Is Amended To Read in Part		
GOODLAND, KS VORTAC	*ORION, KS FIX	**8000
*8000—MRA		
**5700—MOCA		
ORION, KS FIX	*RANSO, KS FIX	**10000
*10000—MRA		
**4500—MOCA		
§ 95.6136 VOR Federal Airway V136 Is Amended To Read in Part		
VOLUNTEER, TN VORTAC	AUBRY, TN FIX.	
	W BND	*5000
	E BND	*8000
*4900—MOCA		
AUBRY, TN FIX	SNOWBIRD, TN VORTAC	*8000
*7400—MOCA		
§ 95.6139 VOR Federal Airway V139 Is Amended To Read in Part		
HARBO, NJ FIX	*DRIFT, NJ FIX	**7500
*6000—MRA		
*12000—MCA DRIFT, NJ FIX, NE BND		
**3000—GNSS MEA		
DRIFT, NJ FIX	*MANTA, NJ FIX	**12000
*12000—MCA MANTA, NJ FIX, SW BND.		
**3000—GNSS MEA		
§ 95.6156 VOR Federal Airway V156 Is Amended To Delete		
PEOTONE, IL VORTAC	LUCIT, IN FIX	2500
LUCIT, IN FIX	MAPPS, IN FIX	*4000
*2400—MOCA		
MAPPS, IN FIX	KNOX, IN VOR/DME	*3000
*2200—MOCA		
KNOX, IN VOR/DME	GIPPER, MI VORTAC	2600
§ 95.6166 VOR Federal Airway V166 Is Amended To Read in Part		
DUPONT, DE VORTAC	WOODSTOWN, NJ VORTAC	2100 MAA—8000
§ 95.6172 VOR Federal Airway V172 Is Amended To Delete		
NORTH PLATTE, NE VOR/DME	WOLBACH, NE VORTAC	*5400
*4500—MOCA		
WOLBACH, NE VORTAC	COLUMBUS, NE VOR/DME	3800
§ 95.6173 VOR Federal Airway V173 Is Amended To Read in Part		
SPINNER, IL VORTAC	*JILLY, IL FIX	**4500
*4500—MCA JILLY, IL FIX, SW BND		
**2400—MOCA		
JILLY, IL FIX	PEOTONE, IL VORTAC	*4500
*2300—MOCA		
§ 95.6195 VOR Federal Airway V195 Is Amended To Read in Part		
TOMAD, CA FIX	*YAGER, CA FIX	8300

From	To	MEA
*6500—MCA YAGER, CA FIX, E BND		

§ 95.6216 VOR Federal Airway V216 Is Amended To Read in Part

From	To	MEA
ORION, KS FIX *4500—MOCA	HILL CITY, KS VORTAC	*5000

§ 95.6219 VOR Federal Airway V219 Is Amended To Delete

From	To	MEA
HAYES CENTER, NE VORTAC *4500—MOCA *5000—GNSS MEA	YOZLE, NE FIX	*7000
YOZLE, NE FIX	WOLBACH, NE VORTAC.	
	NE BND	*5000
	SW BND	*7000
*4500—MOCA *5000—GNSS MEA		
WOLBACH, NE VORTAC	NORFOLK, NE VOR/DME	4000

§ 95.6228 VOR Federal Airway V228 Is Amended To Read in Part

From	To	MEA
NORTHBROOK, IL VOR/DME	GIPPER, MI VORTAC	2600

§ 95.6233 VOR Federal Airway V233 Is Amended To Delete

From	To	MEA
ROBERTS, IL VOR/DME *2200—MOCA	KNOX, IN VOR/DME	*3000
KNOX, IN VOR/DME	GOSHEN, IN VORTAC	2600

§ 95.6243 VOR Federal Airway V243 Is Amended To Delete

From	To	MEA
HEFIN, AL FIX *3400—MOCA	FELTO, GA FIX	*6000
FELTO, GA FIX *4000—MOCA	GORGO, GA FIX	*5000
GORGO, GA FIX	CHOO CHOO, TN DME	4000

§ 95.6264 VOR Federal Airway V264 Is Amended To Read in Part

From	To	MEA
SOCORRO, NM VORTAC	CORONA, NM VORTAC	9700
CORONA, NM VORTAC *9300—MOCA	TUCUMCARI, NM VORTAC	*11000

§ 95.6266 VOR Federal Airway V266 Is Amended To Read in Part

From	To	MEA
ELECTRIC CITY, SC VORTAC	SPARTANBURG, SC VORTAC	2900

§ 95.6267 VOR Federal Airway V267 Is Amended To Delete

From	To	MEA
DOLPHIN, FL VORTAC *1500—MOCA	PAHOKEE, FL VOR/DME	*2000
PAHOKEE, FL VOR/DME *1500—MOCA	DIDDY, FL FIX	*2000
DIDDY, FL FIX	ORLANDO, FL VORTAC	2700
CORCE, GA FIX	TALLE, GA FIX	5300
TALLE, GA FIX	HARRIS, GA VORTAC	7000
HARRIS, GA VORTAC	FORMS, NC FIX	7800
FORMS, NC FIX *6200—MCA KNITS, TN FIX, S BND	*KNITS, TN FIX	7500
KNITS, TN FIX	VOLUNTEER, TN VORTAC	4200

§ 95.6268 VOR Federal Airway V268 Is Amended To Delete

From	To	MEA
NESTO, PA FIX *3100—MOCA	PLEEZ, PA WP	*4000
PLEEZ, PA WP *4500—MOCA	INDIAN HEAD, PA TACAN	*5000
INDIAN HEAD, PA TACAN *4600—MOCA *4700—GNSS MEA	HAGERSTOWN, MD VOR	*12000

Is Amended To Read in Part

From	To	MEA
HARBO, NJ FIX *6000—MRA	*DRIFT, NJ FIX	**7500

From	To	MEA
*12000—MCA DRIFT, NJ FIX, NE BND **3000—GNSS MEA		
DRIFT, NJ FIX	*MANTA, NJ FIX	**12000
*12000—MCA MANTA, NJ FIX, SW BND **3000—GNSS MEA		

§ 95.6269 VOR Federal Airway V269 Is Amended To Read in Part

From	To	MEA
BURLEY, ID VOR/DME	POCATELLO, ID VOR/DME	8600

§ 95.6308 VOR Federal Airway V308 Is Amended To Read in Part

From	To	MEA
HARBO, NJ FIX	*DRIFT, NJ FIX	**7500
*6000—MRA *12000—MCA DRIFT, NJ FIX, NE BND **3000—GNSS MEA		
DRIFT, NJ FIX	*MANTA, NJ FIX	**12000
*12000—MCA MANTA, NJ FIX, SW BND **3000—GNSS MEA		

§ 95.6311 VOR Federal Airway V311 Is Amended To Delete

From	To	MEA
ELECTRIC CITY, SC VORTAC	GREENWOOD, SC VORTAC	2500
GREENWOOD, SC VORTAC	COLUMBIA, SC VORTAC	2400
COLUMBIA, SC VORTAC	*ERNIE, SC FIX	2000
*2500—MRA		
ERNIE, SC FIX	SACKS, SC FIX	2000
SACKS, SC FIX	CHARLESTON, SC VORTAC	2100

§ 95.6333 VOR Federal Airway V333 Is Amended To Delete

From	To	MEA
ROME, GA VORTAC	CHOO CHOO, TN VORTAC	4000
CHOO CHOO, TN VORTAC	*BOOPS, TN WP	3500
*4500—MRA		
BOOPS, TN WP	HINCH MOUNTAIN, TN VOR/DME	5000

§ 95.6340 VOR Federal Airway V340 Is Amended To Delete

From	To	MEA
BEARZ, IN WP	KNOX, IN VOR/DME	3000
KNOX, IN VOR/DME	FORT WAYNE, IN VORTAC	3000

§ 95.6371 VOR Federal Airway V371 Is Amended To Delete

From	To	MEA
BOILER, IN VORTAC	KNOX, IN VOR/DME	2500

§ 95.6380 VOR Federal Airway V380 Is Amended To Delete

From	To	MEA
O'NEILL, NE VORTAC	WOLBACH, NE VORTAC	*4000
*3500—MOCA		
WOLBACH, NE VORTAC	GRAND ISLAND, NE VOR/DME	*4000
*3300—MOCA		

§ 95.6415 VOR Federal Airway V415 Is Amended To Delete

From	To	MEA
GIFFY, AL FIX	FELTO, GA FIX	*5000
*4000—MOCA		
FELTO, GA FIX	GORGO, GA FIX	*5000
*4000—MOCA		
GORGO, GA FIX	ROME, GA VORTAC	4000
ROME, GA VORTAC	*NELLO, GA FIX	5600
*6000—MCA NELLO, GA FIX, E BND		

Is Amended by Adding

From	To	MEA
SEMAN, AL FIX	HEFIN, AL FIX	*6000
*3400—MOCA		

Is Amended To Read in Part

From	To	MEA
NELLO, GA FIX	FOOTHILLS, SC VOR/DME	6000

§ 95.6422 VOR Federal Airway V422 Is Amended To Delete

From	To	MEA
NILES, IL FIX	CHICAGO HEIGHTS, IL VORTAC	3500
CHICAGO HEIGHTS, IL VORTAC	KNOX, IN VOR/DME	2800

From	To	MEA
KNOX, IN VOR/DME	WEBSTER LAKE, IN VOR	2700
§ 95.6580 VOR Federal Airway V463 Is Amended To Delete		
WOMAC, GA FIX *5900—MCA ANNYE, GA FIX, N BND **4100—MOCA	*ANNYE, GA FIX	**5000
ANNYE, GA FIX	HARRIS, GA VORTAC	7000
§ 95.6469 VOR Federal Airway V469 Is Amended To Read in Part		
DUPONT, DE VORTAC	WOODSTOWN, NJ VORTAC	2100 MAA—8000
§ 95.6474 VOR Federal Airway V474 Is Amended To Delete		
NESTO, PA FIX *3100—MOCA	PLEEZ, PA WP	*4000
PLEEZ, PA WP *4500—MOCA	INDIAN HEAD, PA TACAN	*5000
INDIAN HEAD, PA TACAN *4500—MOCA	ST THOMAS, PA VORTAC	*5000
§ 95.6508 VOR Federal Airway V508 Is Amended To Read in Part		
TOPEKA, KS VORTAC	RUGBB, KS FIX	2900
§ 95.6568 VOR Federal Airway V568 Is Amended To Read in Part		
MILLSAP, TX VORTAC	KARYN, TX FIX. SE BND NW BND	 3000 3100
§ 95.6576 VOR Federal Airway V576 Is Amended To Read in Part		
PHILIPSBURG, PA VORTAC	WILLIAMSPORT, PA VOR/DME	4900
WILLIAMSPORT, PA VOR/DME	HANCOCK, NY VOR/DME	4700
HANCOCK, NY VOR/DME	DELANCEY, NY VOR/DME	4900
§ 95.6580 VOR Federal Airway V580 Is Amended To Read in Part		
LEBOY, IL FIX *4500—MCA SEXTN, IL FIX, S BND **2100—MOCA	*SEXTN, IL FIX	**4500
SEXTN, IL FIX *2300—MOCA	BURLINGTON, IA VOR/DME	*3000
§ 95.6582 VOR Federal Airway V582 Is Amended To Delete		
ST LOUIS, MO VORTAC *2200—MOCA	LEBOY, IL FIX	*3000
LEBOY, IL FIX	QUINCY, IL TACAN	3000
§ 95.6586 VOR Federal Airway V586 Is Amended To Delete		
QUINCY, IL TACAN	PEORIA, IL VORTAC	2500
§ 95.6317 ALASKA VOR Federal Airway V317 Is Amended To Read in Part		
ANNETTE ISLAND, AK VOR/DME	GESTI, AK FIX. SE BND NW BND	 5000 9000
GESTI, AK FIX *5300—MOCA	LEVEL ISLAND, AK VOR/DME	*9000
LEVEL ISLAND, AK VOR/DME *6000—MOCA MAA—14600	HOODS, AK FIX	*10000
HOODS, AK FIX *5500—MOCA	SISTERS ISLAND, AK VORTAC	*9000

From	To	MEA	MAA
§ 95.7001 JET Routes			
§ 95.7010 JET Route J10 Is Amended To Delete			
NORTH PLATTE, NE VOR/DME	WOLBACH, NE VORTAC	18000	41000

From	To	MEA	MAA
WOLBACH, NE VORTAC	DES MOINES, IA VORTAC	18000	45000

§ 95.7084 JET Route J84 Is Amended To Delete

From	To	MEA	MAA
SIDNEY, NE VOR/DME	WOLBACH, NE VORTAC	18000	45000
WOLBACH, NE VORTAC	DUBUQUE, IA VORTAC	#21000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			

§ 95.7100 JET Route J100 Is Amended To Delete

From	To	MEA	MAA
SIDNEY, NE VOR/DME	WOLBACH, NE VORTAC	18000	45000
WOLBACH, NE VORTAC	DUBUQUE, IA VORTAC	#21000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			

§ 95.7128 JET Route J128 Is Amended To Delete

From	To	MEA	MAA
HAYES CENTER, NE VORTAC	WOLBACH, NE VORTAC	18000	45000
WOLBACH, NE VORTAC	DUBUQUE, IA VORTAC	#21000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			

§ 95.7133 JET Route J133 Is Amended To Read in Part

From	To	MEA	MAA
SITKA, AK NDB	WOXOX, AK FIX	20000	45000
*20000—MCA WOXOX, AK FIX, E BND			
WOXOX, AK FIX	ORCA BAY, AK NDB	18000	45000

§ 95.7144 JET Route J144 Is Amended To Delete

From	To	MEA	MAA
WOLBACH, NE VORTAC	DES MOINES, IA VORTAC	18000	45000

§ 95.7149 JET Route J149 Is Amended To Read in Part

From	To	MEA	MAA
ARMEL, VA VOR/DME	EYTEE, WV FIX	*31000	41000
*18000—GNSS MEA			
EYTEE, WV FIX	GEFFS, WV FIX	UNUSABLE	

§ 95.7197 JET Route J197 Is Amended To Delete

From	To	MEA	MAA
GOODLAND, KS VORTAC	WOLBACH, NE VORTAC	18000	45000
WOLBACH, NE VORTAC	SIOUX FALLS, SD VORTAC	18000	45000

§ 95.7518 JET Route J518 Is Amended To Delete

From	To	MEA	MAA
DRYER, OH VOR/DME	INDIAN HEAD, PA TACAN	18000	45000
INDIAN HEAD, PA TACAN	BALTIMORE, MD VORTAC	18000	35000

§ 95.8003 VOR Federal Airway Changeover Points
V51 Is Amended To Delete Changeover Point

Airway segment		Changeover points	
From	To	Distance	From
CRAIG, FL VORTAC	ALMA, GA VORTAC	48	CRAIG
DUBLIN, GA VORTAC	ATHENS, GA VOR/DME	47	DUBLIN

V115 Is Amended To Delete Changeover Point

From	To	Distance	From
VULCAN, AL VORTAC	CHOO CHOO, TN DME	59	VULCAN

V136 Is Amended To Delete Changeover Point

From	To	Distance	From
VOLUNTEER, TN VORTAC	SNOWBIRD, TN VORTAC	25	VOLUNTEER

§ 95.8005 JET Routes Changeover Points
J518 Is Amended To Delete Changeover Point

From	To	Distance	From
INDIAN HEAD, PA VORTAC	BALTIMORE, MD VORTAC	20	INDIAN HEAD

[FR Doc. 2023–10553 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2023–D–1336]

Requirements for Additional Traceability Records for Certain Foods: What You Need To Know About the Food and Drug Administration Regulation: Guidance for Industry; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled ''Requirements for Additional Traceability Records for Certain Foods: What You Need to Know About the FDA Regulation: Guidance for Industry—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with the final rule entitled ''Requirements for Additional Traceability Records for Certain Foods.''

DATES: The announcement of the guidance is published in the **Federal Register** on May 19, 2023.

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

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–1336 for ''Requirements for Additional Traceability Records for Certain Foods: What You Need to Know About the FDA Regulation: Guidance for Industry—Small Entity Compliance Guide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of the SECG to the Office of Analytics and Outreach, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT:
Katherine Vierk, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2122.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 21, 2022 (87 FR 70910), we issued a final rule establishing additional recordkeeping requirements for persons who manufacture, process, pack, or hold foods FDA has designated for inclusion on the Food Traceability List (the final rule). The requirements established in the final rule will help the Agency rapidly and effectively identify recipients of foods to prevent or mitigate foodborne illness outbreaks and address credible threats of serious adverse health consequences or death resulting from foods being adulterated or misbranded. The final rule, which is codified at 21 CFR part 1, subpart S (§§ 1.1300 through 1.1465), became effective on January 20, 2023, but has a compliance date of January 20, 2026.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business

Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

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

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 1, subpart S, have been approved under OMB control number 0910–0560.

III. Electronic Access

Persons with access to the internet may obtain the SECG at *https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-rules-guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: May 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10666 Filed 5–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Publication of Iranian Transactions and Sanctions Regulations Web General License O

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a general license (GL) issued pursuant to the Iranian Transactions and Sanctions Regulations and Executive Order 13846, GL O, which was previously made available on OFAC's website.

DATES: GL O was issued on March 2, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On March 2, 2023, OFAC issued GL O to authorize certain transactions otherwise prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, or Executive Order 13846 of August 6, 2018, ''Reimposing Certain Sanctions With Respect to Iran'' (83 FR 38939). This GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. GL O has an expiration date of June 30, 2023. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13846 of August 6, 2018

Reimposing Certain Sanctions With Respect to Iran

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE O

Authorizing Wind-Down and Limited Safety and Environmental Transactions Involving Certain Vessels

(a) Except as provided in paragraph (c) of this general license, the following transactions are authorized through 12:01 a.m. eastern daylight time, June 30, 2023, provided that any payment to a blocked person, including any blocked entity described in paragraph (b) of this general license, must be made into a blocked account and reported to the Office of Foreign Assets Control consistent with § 501.603 of the Reporting, Procedures and Penalties Regulations, 31 CFR part 501:

(1) All transactions prohibited by section 5 of Executive Order (E.O.) 13846 that are ordinarily incident and necessary to the wind down of any transaction involving any vessel in which one or more entities described in paragraph (b) of this general license have an interest, including the vessels described in the Annex to this general license (the ''blocked vessels''); and

(2) All transactions prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), that are ordinarily incident and necessary to any of the following activities involving the blocked vessels or entities described in paragraph (b) of this general license:

(i) The safe docking and anchoring of any of the blocked vessels in port;

(ii) The preservation of the health or safety of the crew of any of the blocked vessels; and

(iii) Emergency repairs of any of the blocked vessels or environmental mitigation or protection activities relating to any of the blocked vessels.

(b) The authorizations in paragraph (a) of this general license apply to the following entities:

(1) Golden Lotus Oil Gas and Real Estate Joint Stock Company;

(2) Swedish Management CO SA;

(3) Shanghai Xuanrun Shipping Company Limited;

(4) Global Marine Ship Management Co., Ltd.; or

(5) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(c) This general license does not authorize:

(1) The offloading of any Iranian-origin petroleum, petroleum products, or petrochemical products;

(2) The entry into any new commercial contracts involving the blocked vessels or the entities described in paragraph (b) of this general license, except as authorized by paragraph (a); or

(3) Any transactions otherwise prohibited by section 5 of E.O. 13846 or the ITSR, including transactions involving any person blocked pursuant to section 5 of E.O. 13846 or the ITSR other than the blocked entities described in paragraph (b) of this general license, unless separately authorized.

Dated: March 2, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Annex

Vessels in which one or more of the entities described in paragraph (b) of Iran General License O have an interest:

(a) Vessels in which Golden Lotus Oil Gas and Real Estate Joint Stock Company has an interest:

(1) Dolphin, IMO 9052331
(2) Lauren, IMO 9249685
(3) Golden Bridge, IMO 9218301
(4) Golden Phoenix, IMO 9224790
(5) Amias, IMO 9342786
(6) Jamaica, IMO 9230098
(7) Golden Light 09, IMO 9445057
(8) Gas Cathar, IMO 9250505

(b) Vessels in which Swedish Management CO SA has an interest:

(1) Rising Eagle, IMO 9073672
(2) Rising Falcon, IMO 9105396
(3) Rising Harrier, IMO 9122291
(4) Cattle Force, IMO 9175901
(5) Hercules, IMO 9558517
(6) Gladiator, 7621011

(c) Vessels in which Shanghai Xuanrun Shipping Company Limited has an interest:

(1) Yong Xiang 29, IMO 8744107
(2) Forever Rich, IMO 9203928
(3) Yong Xin, IMO 9203930
(4) Xuan Ning, IMO 9349095
(5) Liang Sheng, IMO 9526693
(6) Full Star, 9773301

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–10700 Filed 5–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0216]

RIN 1625–AA00

Safety Zone; Ohio River, Cincinnati, OH

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 487.0 to MM 489.0. This action is necessary to provide for the safety of personnel, vessels, and the marine environment from potential hazards created by Duke Energy's Static Wire Crossing operation taking place on the Ohio River from MM 487.0 to MM 489.0. Entry of vessel or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from May 19, 2023, through May 19, 2023. For the purposes of enforcement, actual notice will be used from May 15, 2023, until May 19, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0216 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 Petty Officer Thomas Harp, MSD Cincinnati, U.S. Coast Guard; telephone number 513–921–9033, email *Thomas.L.Harp@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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

On May 1, 2023, the Coast Guard issued a temporary final rule establishing a safety zone on all waters of the Ohio River from MM 487.0 to 489.0 to protect persons, vessels, and the marine environment from potential hazards created by Duke Energy's Static Wire Crossing operation (88 FR 28408, May 4, 2023). The original rule was effective through May 15, 2023. However, additional time is needed to conduct the static wire crossing, and, as a result, the Coast Guard needs to extend the safety zone through May 19, 2023. 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 extension because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking because it is impracticable due to the emergent nature of the continuing wire crossing operation and required publication of this extension.

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 and contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the static wire crossing operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Duke Energy's Static Wire Crossing operation will be a safety concern for all navigable waters on the Ohio River from MM 487.0 to 489.0. This rule is needed to ensure the safety of life and vessels on these navigable waters.

IV. Discussion of the Rule

This rule extends the effective dates of an established safety zone, originally established on May 1, 2023, and effective through May 15, 2023, through May 19, 2023. The safety zone includes all navigable waters of the Ohio River between MM 487.0 to 489.0. The extended duration of the zone is intended to protect personnel, vessels, and the maritime environment in these navigable waters while static wire crossing operations are conducted.. No vessel or persons will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Vessels may contact Sector Ohio Valley Command Center on VHF–FM Channel 16 or by telephone at 1–800–253–7465. Person and vessel permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the 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 the size, location, and limited duration of the safety zone. This zone will be in place on a two mile stretch of the Ohio River between the hours of 7 a.m. through 5 p.m. through May 19, 2023, or until the work is completed, whichever is sooner. The Coast Guard will issue a Local Notice to Mariners via VHF–FM marine channel 16 about the temporary safety zone. This rule allows vessels to seek permission from the COTP or a designated representative to enter the safety zone.

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 safety zone 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 safety zone lasting for 30 days that will prohibit entry within certain navigable waters of the Chincoteague Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0216 to read as follows:

§ 165.T08–0216 Safety Zone; Ohio River, Cincinnati, OH.

(a) *Location.* All navigable waters of the Ohio River between mile marker (MM) 487.0 to MM 489.0, in Finney, OH.

(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 Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–4765.

(2) Persons and vessels permitted to enter the safety zone listed in paragraph (a) of this section must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) *Enforcement period.* This section will be enforced May 1, 2023, through May 19, 2023, unless an earlier end is announced by broadcast notice to mariners.

Dated: May 15, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2023–10766 Filed 5–18–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2023–0127]

RIN 1625–AA00

Safety Zone; Fireworks Display; James River, Newport News, VA

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

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for navigable waters within a 400-yard radius of a fireworks barge in the James River, Newport News, VA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the launching of fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Sector Virginia.

DATES: This rule is effective June 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0127 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 LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580 email *Ashley.E.Holm@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

On January 12, 2023, the City of Newport News notified the Coast Guard that they will be conducting fireworks display annually on July 4th from 9 p.m. to 9:30 p.m. each year, to commemorate Independence Day. The fireworks are to be launched from a barge at position 36°58′28.72″ N, 076°26′20.97″ W in the James River in Newport News, VA. In response, on March 21, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Fireworks Display; James River, Newport News, VA'' [88 FR 16922; FR 2023–05669]. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended April 20, 2023, two comments were received.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Virginia (COTP) has determined that potential hazards associated with the fireworks to be used in this 4th of July fireworks display will be a safety concern for anyone within a 400-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published March 21, 2023. Both comments were in support of the regulation. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone annually on July 4th from 9 to 9:30 p.m. each year. The safety zone would cover all navigable waters within 400 yards of the fireworks barge located at position 36°58′28.72″ N, 076°26′20.97″ W in the James River in Newport News, VA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the fireworks display. No vessel or person would 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 the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the James River for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

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 received no comments from the Small Business Administration on this rulemaking. 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 safety zone 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 safety zone lasting only 30 minutes that will prohibit entry within 400 yards of the fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. In § 165.506, amend table 3 to paragraph (h)(3) by adding entry 14 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

* * * * *

(h) * * *

(3) * * *

TABLE 3 TO PARAGRAPH (h)(3)

No.	Enforcement period(s)	Location	Safety zone—regulated area
*	*	*	* * * *
14	July 4th	James River, Newport News, VA; Safety Zone.	All waters of the James River, within a 400-yard radius around position 36°58′28.72″ N, 076°26′20.97″ W.

* * * * *

Dated: May 12, 2023.

Jennifer A. Stockwell,

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

[FR Doc. 2023–10676 Filed 5–18–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0354]

RIN 1625–AA00

Safety Zone; Kanawha River, Nitro, WV

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for all navigable waters of the Kanawha River between mile markers 43 and 44. The safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by Captain of the Port Marine Safety Unit Huntington.

DATES: This rule is effective from 9 p.m. through 10 p.m. on May 27, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0354 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 Chelsea Zimmerman, Marine Safety Unit Huntington, U.S. Coast Guard; (304) 733–0198, *Chelsea.M.Zimmerman@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 we must establish the safety zone by May 27, 2023, and lack sufficient time to request public comments and respond to these comments before the safety zone must be established. Waiting for a full comment period to run would inhibit the Coast Guard's ability to keep the public safe from the hazards associated with a fireworks display and the ability to minimize the impact to vessel traffic on the navigable waterway.

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 contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the Nitro Memorial Day Celebration taking place on the Kanawha River between mile marker 43 and mile marker 44.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with Nitro Memorial Day Celebration starting May 27, 2023, will be a safety concern for anyone on the Kanawha River from mile marker 43 to mile marker 44. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. through 10 p.m. on May 27, 2023. The safety zone will cover all navigable waters between mile markers 43 and 44 on the Kanawha River. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through Marine Safety Unit Huntington at 304–563–9084. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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 the size, location, and duration of the safety zone. This safety zone impacts a 1-mile stretch of the Kanawha River for a limited duration of less than 2 hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

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 safety zone 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 safety zone lasting one hour that will limit access of the Kanawha River from mile marker 43 to mile marker 44. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0354 to read as follows:

§ 165.T08–0354 Safety Zone; Kanawha River, Nitro, WV.

(a) *Regulated area.* The regulations in this section apply to the following area: all navigable waters of the Kanawha River from mile marker 43 to mile marker 44 near Nitro City Park, Park Avenue, Nitro, WV.

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

Designated representative means a Coast Guard Patrol Commander (PATCOM), 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 Ohio Valley (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) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement, and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the enforcement period in paragraph (d) of this section, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or

signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area specified in paragraph (a) of this section, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM marine radio channel 16 or phone at 1–800–253–7465. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

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

(d) *Enforcement period.* The safety zone in paragraph (a) of this section will be enforced from 9 p.m. to 10 p.m. on May 27, 2023.

Dated: May 9, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2023–10715 Filed 5–18–23; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Commercial Mail Receiving Agencies

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to update the regulations concerning Commercial Mail Receiving Agencies (CMRAs).

DATES: Effective July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Judi Mummy at (858) 674–3155, Clayton Gerber at (202) 449–8076, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On January 12, 2023, the Postal Service published a notice of proposed rulemaking (88 FR 2047–2049) to revise subsection 508.1.8 by reorganizing and revising the subsections in 508.1.8. The proposed rule included changes to accommodate the development of an electronic database to collect and manage the information collected on PS Form 1583, *Application for Delivery of Mail Through Agent,* which has been collected and maintained as paper records. In this final rule, the Postal Service is adopting the proposed rule with three minor changes described below. As part of the final rule, CMRAs will receive direct notification from the Postal Service informing them how to gain access to the CMRA Customer Registration Database (CRD). Following notification, the CMRA will have a period of approximately 9 months to collect and enter into the CRD new PS Form 1583s for each of their existing Private Mailbox (PMB) customers. PS Form 1583 applications for new PMB customers must be entered into the new CMRA CRD when they are received.

Below are high-level summaries of the changes made to the proposed rule in this final rule:

- DMM section 1.8.2.f will prohibit PMBs from being used for unlawful activity similar to the provisions that apply to P.O. Boxes.
- CMRAs will be permitted to dispose of copies of identification documents after they upload them into the CMRA CRD.
- It is sufficient for a CMRAs to maintain a digital copy of each signed PS Form 1583 in lieu of a paper form.

Response to Comments

The Postal Service received 26 responses to the notice of proposed rulemaking, several of which included comments on multiple topics. Commenters included CMRAs, associations, and individual consumers. Comments and Postal Service responses are summarized as follows.

Comment: Several commenters recognized that the new online CMRA CRD will solve the cumbersome and outdated paper-based submission and filing system with the current PS Form 1583—Application for Delivery of Mail Through Agent.

Response: The Postal Service shares this assessment and expects that changes will significantly improve accuracy, security, record keeping, and delivery service.

Comment: Several comments indicating that the changes are not possible because the current PS Form 1583 either contradicts the new DMM changes or does not collect the information articulated in the DMM changes.

Response: These comments assume PS Form 1583 will not be changed; however, the Postal Service has updated the PS Form 1583 to be consistent with the DMM changes and new CMRA CRD and will be making the new form available in conjunction with this final rule. The revised Form is available to the public at *https://about.usps.com/resources/forms.htm.*

Comment: Several commenters expressed concerns about compliance with privacy laws as well as 18 United States Code 701 relating to the copying of government identification cards. Additionally, we have been asked to limit or clarify what the Postal Service may use the information we collect in the CMRA CRD for.

Response: The final rule is not inconsistent with 18 U.S.C. 701, which provides that copies may be made as ''authorized under regulations made pursuant to law.'' The CMRA regulations set forth in the DMM are Postal Service regulations and incorporated by reference in the Code of Federal Regulations in accordance with 39 CFR parts 111 and 211. The DMM's identification photocopying requirement falls within the exception recognized by § 701 for copying that is ''authorized under regulations made pursuant to law.''

The Postal Service, as an independent establishment of the Executive Branch, complies with the Privacy Act of 1974. Under the Privacy Act, the Postal Service is permitted to collect Privacy Act protected information, including copies of government identification cards retrievable by individual identifier, in a Privacy Act system of records. Records pertaining to CMRAs fall within the scope of the Postal Service Privacy Act customer systems of records found in USPS SOR 845.000, Commercial Mail Receiving Agency, in Appendix E to USPS Handbook AS–353. Changes to USPS SOR 845.000 were recently published in the **Federal Register** so as to facilitate the changes in practice reflected in this final rule at 87 FR 79005 (*https://www.federalregister.gov/documents/2022/12/23/2022-27992/notice-of-new-system-of-records-response-to-comments*).

Comment: Several commenters asked about the forms of identification that are acceptable to present when opening a PMB at a CMRA, mentioning corporate identifications and utility bills, among other forms.

Response: The Postal Service updated the acceptable forms of identification for its various services in a prior DMM update published in the Postal Bulletin No. 22613 (*https://about.usps.com/postal-bulletin/2022/pb22613/html/updt_001.htm*). Only those specifically enumerated forms of identification are acceptable. Corporate identification cards and utility bills are no longer acceptable forms of identification for completing PS Form 1583A Application to Act as a Commercial Mail Receiving Agency and PS Form 1583—Application for Delivery of Mail Through Agent.

Comment: Several commenters questioned why the identification document presented must be current (not expired), additionally noting that most address verification documents do not have expiration dates.

Response: The Postal Service relies on government agencies to establish and maintain identification document protocols and standards, which change over time. Collection of non-expired identifications ensures the most reliable means of establishing that the person presenting themselves for service is who they claim to be. Current non-expiring documents, such as most of the address verification documents that match the address shown on the application satisfy the address identification requirement.

Comment: One commenter asking if a State Driver's License could serve as an acceptable secondary (address) identification.

Response: A driver's license could be a secondary form of identification, but an application would still need to be supported by separate form of primary (photo) identification. For example: a Passport could be an acceptable primary identification and a Driver's License could be an acceptable secondary form. See DMM 608.10 for acceptable forms of primary and secondary identifications.

Comment: Several commenters asked if a CMRA needed to update expired photo identification documents for PMBs that have closed and are in the 6 month remail period.

Response: No, CMRAs will not need to update expired documents for closed PMBs.

Comment: One commenter asked what identification is collected when the addressee is a business/organization.

Response: The applicant on PS Form 1583 is always an individual and they must provide their primary and secondary forms of identification. If the mail received is to be addressed to a business/organization, the applicant must also list the name and address of the business/organization as well as the place (county and state or country) where the business/organization is registered.

Comment: Several commenters asked how a CMRA could certify that its PS Form 1583s on file are all current with no expired photo identification documents each quarter without reviewing each entry.

Response: In the new system, the CMRA CRD will automatically notify the CMRA when a photo identification document entered has expired so the CMRA may provide notice to their customer to collect a current copy.

Comment: Several commenters asked why a CMRA must remail PMB customers' mail for a period of 6 month after the termination date of their agency relationship.

Response: These comments are not within scope of the current rulemaking. Remailing PMB customers' mail is already specified in DMM section 1.8.3b: "The CMRA must remail mail intended for the addressee (customer) for at least 6 months after the termination date of the agency relationship between the CMRA and addressee."

Comment: Several commenters asked that the Postal Service apply the same prohibitory language to PMBs as is applied to Post Office Boxes insofar as suspected criminal activity in concerned. Commenters also asked what CMRAs should do when they identify suspected criminal activity associated with a PMB holder.

Response: The Postal Service has taken these comments into consideration and is revising DMM section 1.8.2.f so as to make the prohibitions apply consistently to both Private Mail Boxes (PMBs) and P.O. Boxes, as follows:

Unlawful Activity—A PMB may not be used for, or in connection with, a scheme or enterprise that violates any federal, state, or local law; breaches an agreement with a federal, state, or local agency whereby the box customer has agreed to discontinue a specified activity; or violates or attempts to evade any order of a court or administrative body.

Additionally, the new CMRA CRD will have a mechanism to enable CMRA owners/managers to confidentially report suspicious activity related to a PMB directly to the Postal Inspection Service.

Comment: Several commenters asked why a CMRA owner/manager must complete a PS Form 1583 for themselves.

Response: This measure is being undertaken to enhance security. The local post office will no longer retain copies of photo and address identification documents. The documents will instead be uploaded and securely maintained in the CMRA CRD. Although the CMRA owner/manager will be subject to in person identification proofing, additional measures are needed in order to retain these identification documents so that automated means can ensure they are current and updated as required.

Comment: Several commenters asked about the proposed rule that states "If information on the application does not match the identification, the CMRA must deny the application." Specifically, the commenters cited situations where a PMB applicant is new to an area and may not have new Identification or address documents.

Response: The CMRA is required to ensure the individuals presenting themselves as an applicant for a PMB or individuals authorized to collect mail from a PMB are correctly identifying themselves. This means their primary (photo) identification documents must be acceptable, non-expired, photo identification documents and the information on those photo identification documents must be entered into the CMRA CRD and a clear and readable copy of those identification documents must be uploaded into the CRD so the Postal Service may verify the information is correct as entered. For PMB applicants new to an area, they may use their primary (photo) identification documents from before their move. They may also update their primary (photo) identification documents at any time. They must update them when they expire. For address verification, the applicant must list the address on the application that matches the acceptable secondary (address) identification document provided. This may be an address identification document from a prior address, *e.g.,* if the applicant has moved to a new area. The individuals may update their secondary (address) identification documents at any time.

Comment: Several commenters inquired about the requirement to provide the address, physical or digital, where mail is transferred or remailed on behalf of the PMB holder, either during the period of the PMB lease or during the six-month period after the box lease has ended.

Response: The PMB holder is a Postal Service customer receiving mail via the U.S. Mail. The Postal Service has a business and service need to ensure its customers are receiving their mail, even if through an agent. The information is required for contingencies such as when the CMRA goes out of business or fails to deliver mail to the customer as directed. This is not a new practice because the existing PS Form 1583 requires the CMRA to report the address where mail is transferred or otherwise remailed upon request. As customer service and security enhancements, the final rule requires that information be entered into the CMRA CRD and be updated at any time if the address for remailing changes.

Comment: Several commenters asked about the rule requiring CMRAs to accept all classes of mail on behalf of PMB holders. Specifically, the commenters questioned the removal of a special designation for restricted delivery and asked about COD mail.

Response: Prior to this rule change, the only class of mail that was treated uniquely was restricted delivery mail. The prior rule allowed the PMB holder to specifically sign PS Form 1583 authorizing the CMRA to receive restricted delivery mail. If this portion of PS Form 1583 was not signed, the Postal Service was not supposed to deliver restricted delivery mail to that specific PMB. That rule has been an unworkable solution. The Postal Service provides single point delivery to a CMRA and the letter carrier delivering the mail to the CMRA has no knowledge or access to PS Form 1583s submitted for the PMB holders and has no way to know if a piece of Restricted Mail should be withheld from delivery. Therefore, the final rule clarifies that a PMB holder will receive all mail via the CMRA address, including restricted delivery. There was previously no exemption for COD mail, so the final rule makes no change with respect to treatment of COD mail.

Comment: Several commenters asked about the implementation date of these changes and the time period to begin using the CMRA CRD as well as the time period to enter all PMB applicants in the CMRA CRD.

Response: To coincide with other changes to the DMM, these final rules will go into effect on July 9, 2023. Each CMRA will receive direct notice, via physical mail, from the Postal Service with instructions on how to access and enter PS Form 1583 data and documents into the CMRA CRD. Once the CMRA receives this direct notice, they will be able to enter all the PS Form 1583 data into the application. Existing PMB customers will need to complete a new PS Form 1583 and provide copies of their identification documents. CMRAs will have a period of nine (9) months to complete the task of migrating all existing PMB customers to the new form and application.

Comment: One commentor questioned whether existing spouses who both are currently listed on a single PS Form 1583 could be ''grandfathered in'' and not complete a new 1583 for each.

Response: A new PS Form 1583 will need to be completed for every PMB customer. Each spouse must complete a separate PS Form 1583. In order for the Postal Service to optimize the security benefits of the new system, all customers (including spouses) are required to complete a new PS Form 1583.

Comment: One commenter stated that CMRAs lack the physical security to ensure the protection of copies of photo and address identification documents provided by PMB customers and asked if the CMRA could elect to not retain a copy of the identification documents after they upload them into the CMRA CRD to mitigate the risk of theft or loss.

Response: The Postal Service appreciates this concern. Upon further consideration, the final rule has been revised to accommodate this suggestion. Specifically, the final rule has been changed so that the CMRA has the option to dispose of copies of the identification documents after they are uploaded into the CMRA CRD. In such cases, CMRAs will have to collect a replacement copy and upload it if, upon review, the copy that has been uploaded is not legible or readable.

Comment: One commenter asked if a CMRA could retain a digital copy of each completed PS Form 1583 in lieu of the original signed paper copy.

Response: The Postal Service agrees that it is sufficient for the CMRA to retain a digital copy of each completed PS Form 1583 in lieu of the original signed paper copy. The final rule has been revised accordingly.

Comment: Several commenters stated that the proposed rule specifying CMRAs have 30 days to comply with deficiencies after being notified by the Postal Service is an undue burden.

Response: The prior requirement was open ended and lacked specificity. The Postal Service submits that specifying a prescribed time period enhances predictability and promotes economy of administration for both the CMRA and the Postal Service.

Comment: Several commenters asked the Postal Service to provide for the receipt of the PS Form 1583 data and documents via an electronic transfer such as an Application Process Interface (API).

Response: The Postal Service is exploring the option of allowing an API process to upload these data. Such a facility would not be available in the first year; however, as it will require significant technical data definitions that the CMRA industry will have to match to correctly push the data.

Comment: Several commenters asked the Postal Service to create an online version of the PS Form 1583 that would allow PMB customers to complete the application online.

Response: Given the relationship between the CMRA and the PMB applicant and the need for in person identity proofing, the Postal Service determined to maintain the in-person application process between the CMRA and its customer.

Comment: One commenter asked whether the Postal Service would respond to law enforcement subpoenas served on CMRAs for PMB holder's data.

Response: The Postal Service will not respond to subpoenas addressed to a CMRA. Subpoenas addressed to a CMRA are the responsibility of the CMRA. The CMRA would normally respond to subpoena issued to the CMRA in so far as the records of the CMRA are sought. The Postal Service responds to court orders and subpoenas directed to the Postal Service and when legally required to do so.

Comment: One commenter asked if the Postal Service would provide the tools and software to scan identification documents.

Response: The Postal Service will not be providing the equipment necessary to scan identifications. The CMRA CRD will require a computer connected to the internet to access the database and will require CMRAs to be able to take digital pictures or scans that they can upload via the web-based application. None of the above will require unique or specialized equipment and is equipment commonly used by CMRAs.

Comment: One commenter asked the Postal Service to endorse a digital identity verification process, in addition to employee-facilitated verification, sufficient to meet the verification process for an individual seeking to be listed on PS Form 1583.

Response: The Postal Service requires either that:

- The PS Form 1583 be notarized, or
- The applicant's identity be verified in person by a CMRA employee.

Current subsections 1.8.1 through 1.8.4 will be renumbered as subsections 1.8.2 through 1.8.5. New subsection 508.1.8.1 will define what type of business is considered a CMRA and therefore must comply with the requirements in this section. The definitions are based on the type of service the business entity receives from the Postal Service. If an entity receives U.S. Mail for multiple customers and receives single point mail delivery from the Postal Service, it is considered a CMRA for purposes of complying with these requirements. There will be three specifically defined entities that must register as a CMRA and comply with these requirements: a CMRA that provides private mail boxes and accepts delivery of mail on behalf of another; an office business center (OBC) that provides private office facilities for others and receives single-point mail delivery from the Postal Service; and a reshipping or redelivery service that accepts delivery of mail on behalf of another for the purpose of reshipping or redelivering that mail either physically or electronically.

Renumbered subsection 1.8.2, *Procedures,* will be revised to require a CMRA owner must apply to operate a CMRA by submitting a completed PS Form 1583–A, *Application to Act as a Commercial Mail Receiving Agency,* and presenting acceptable, and not expired, form of Identification to the Post Office for review. If any of the information on PS Form 1583–A changes over time or becomes expired, the CMRA owner must submit an updated form to the Postal Service. The Postal Service will be scanning and uploading this form to the Postal Service's Facilities Database (FDB). The Postal Service will add a new item 1.8.2e to provide notice that CMRAs not in compliance with these regulations could be suspended and that CMRAs will have 30 days to come into compliance, and a new item 1.8.2f to affirmatively state that private mailboxes (PMBs) may not be used for unlawful activity.

Renumbered subsection 1.8.3, *Delivery to a CMRA,* will be revised to specify requirements related to PS Form 1583, *Application for Delivery of Mail Through Agent,* necessary with the implementation of the new CMRA Customer Registration Database. Item 1.8.3a will be revised to specify that a CMRA owner or manager will have to complete and submit a PS Form 1583 form themselves. Further, it will specify that spouses must each complete a separate PS Form 1583 if they both choose to receive mail at a single PMB address. The Postal Service is also specifying that the name and address information submitted on PS Form 1583 must match the photo and address verification documents provided with the application or the application will be rejected. Identification documents must be current (not expired). Any changes to the information on a PS Form 1583 will require the submission of a new PS Form 1583. Item 1.8.3c will be revised to specify that CMRA owners or managers will be required to enter the data from PS Form 1583 and upload copies of the supporting documents into the Postal Service's electronic CMRA Customer Registration Database rather than provide paper copies to their local Post Office. Item 1.8.3h will be revised to specify that CMRA owners or managers must enter the date PMBs close into the CMRA Customer Registration Database and that any expired, illegible, or unclear documents are not acceptable and will not be considered in compliance. Item 1.8.3i will be revised to specify that CMRA owners or manager must certify the information they submitted in the CMRA Customer Registration Database is current each quarter, with certifications due 15 days after the end of each quarter. Item 1.8.3j will be revised to specify that CMRAs will have 30 days to comply with deficiencies that are identified by the Postal Service. The Postal Service is adding a new item 1.8.3l to specify that the CMRA may be directed by the Chief Postal Inspector to withhold mail from delivery to an individual PMB and return that mail to the Postal Service.

Renumbered subsection 1.8.4, *Addressee and CMRA Agreement,* will be updated to describe the procedures when the relationship between a CMRA and PMB holder end. Item 1.8.4a will be revised to specify that CMRA owners or managers must record when a PMB closes, enter that date in the CMRA Customer Registration Database, and that they must maintain their records for six months after the PMB is closed. Item 1.8.4b will be revised to specify that if a CMRA reships, or otherwise re-mails the mail addressed to a PMB, whether physically or electronically, the CMRA must record on PS Form 1583 and in the CMRA Customer Registration Database the address to where they reship, remail or transmit the customer's mail. Additionally, if the mail is physically collected during the time period the PMB is active but remailed for the six month period after the PMB is closed, the remail address needs to be entered into the CMRA Customer Registration Database. Renumbered item 1.8.4d will be deleted as it is addressed in the revisions described above and item 1.8.4e will be deleted as to a separate provision for Restricted Mail, completion of a PS Form 1583 provides for an agent to receive all classes of mail. Items 1.8.4f and 1.8.4g will be renumbered as 1.8.4d and 1.8.4e.

The Postal Service is deleting renumbered 1.8.5, *Office Business Center Acting as a CMRA,* since office business centers (OBCs) are defined as CMRAs for purposes of this regulation as specified in new subsection 1.8.1, *Commercial Mail Receiving Agency.*

We believe this proposed revision will provide customers with a more efficient process for establishing a CMRA.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

508 Recipient Services

1.0 Recipient Options

* * * * *

1.8 Commercial Mail Receiving Agencies

[Renumber 1.8.1 through 1.8.4 as 1.8.2 through 1.8.5 and add new 1.8.1 to read as follows:]

1.8.1 Commercial Mail Receiving Agency

The definition of a Commercial Mail Receiving Agency is as follows:

a. A Commercial Mail Receiving Agency (CMRA) is defined as a business that, in whole or in part, accepts the delivery of U.S. Mail on behalf of another person or entity as a business service. U.S. Mail is inclusive of all classes of mail.

b. An office business center (OBC) is a business that operates primarily to provide private office facilities and other business support services to individuals or firms (customers). OBCs receive single-point delivery. OBCs are considered CMRAs for postal purposes and must comply with DMM 508.1.8.

c. A business or individual that operates primarily to provide re-shipping or re-delivery services to individuals or firms (customers) is considered a CMRA for postal purposes and must comply with DMM 508.1.8.

1.8.2 Procedures

The procedures for establishing a commercial mail receiving agency (CMRA) are as follows:

* * * * *

b.

* * * * *

[Revise the second paragraph under renumbered item 1.8.2b to read as follows:]

The CMRA owner or manager must present acceptable primary and secondary forms of identification as specified under 608.10.0. The identifications presented must be current (not expired). These identifications must contain sufficient information to confirm that the applicant is who he or she claims to be and is traceable to the bearer. The postmaster (or designee) must list and record sufficient information to identify the two acceptable forms of identification on PS Form 1583–A (block 10).

[Revise the second sentence of the third paragraph under renumbered item 1.8.2b to read as follows:]

* * * If any information required on PS Form 1583–A changes, the CMRA owner or manager must file a new application with the postmaster.

[Revise the text of renumbered item 1.8.2c to read as follows:]

c. The postmaster (or designee) must verify the documentation to confirm that the CMRA owner or manager resides at the permanent home address shown on Form 1583–A; witness the signature of the CMRA owner or manager; and sign Form 1583–A. The postmaster must provide the CMRA owner or manager with a copy of the DMM regulations relevant to the operation of a CMRA under 1.8. The CMRA owner or manager must sign the Form 1583–A acknowledging receipt of the regulations. The postmaster must file the original of the completed Form 1583–A at the Post Office, scan and upload a copy into the Facilities Database (FDB) and provide the CMRA with a duplicate copy.

* * * * *

[Revise the text of renumbered 1.8.2 by adding a new item e and f to read as follows:]

e. CMRAs found not to be operating within the Postal Service regulations will be suspended from authorization to act as a CMRA until the CMRA is in compliance with the regulations. If compliance is not achieved within 30 days, the Postal Service may terminate the CMRA's authorization to accept mail on behalf of others.

f. Unlawful Activity—A Private Mail Box (PMB) may not be used for, or in connection with, a scheme or enterprise that violates any federal, state, or local law; breaches an agreement with a federal, state, or local agency whereby the box customer has agreed to discontinue a specified activity; or violates or attempts to evade any order of a court or administrative body.

1.8.3 Delivery to CMRA

Procedures for delivery to a CMRA are as follows:

[Revise the text of paragraphs one and two under renumbered item 1.8.3a to read as follows:]

a. Mail delivery to a CMRA requires that the CMRA owner or manager complete and sign PS Form 1583, Application for Delivery of Mail Through Agent, for themselves. Private Mail Boxes (PMBs) for residential/personal use must have a separate PS Form 1583 completed for each addressee. Spouses must each complete and sign a separate PS Form 1583. Each spouse must provide acceptable primary and secondary forms of identification as specified under 608.10.0.

A parent or guardian may receive delivery of a minor's mail by listing the name(s) of each minor on PS Form 1583 (block 11).

* * * * *

[Revise the text in the fourth and fifth paragraph under renumbered item 1.8.3a by combining the text into the fourth paragraph to read as follows:]

If information on the application does not match the identification, the CMRA must deny the application. Furnishing false information on the application or refusing to provide required information is reason for withholding the addressee's mail from delivery to the agent and returning it to the sender.

[Revise the text of the renumbered fifth and sixth paragraphs under renumbered item 1.8.3a to read as follows:]

When any information required on PS Form 1583 changes, the addressee must complete a new application with the CMRA. The addressee must provide acceptable primary and secondary forms of identification as specified under 608.10.0. The identification presented must be current (not expired). It must contain sufficient information to confirm that the applicant is who he or she claims to be and is traceable to the bearer.

The CMRA owner or manager must list and record on PS Form 1583 (block 10) sufficient information to identify the acceptable primary and secondary forms of identification presented and write on PS Form 1583 (block 4) the complete CMRA delivery address used to deliver mail to the addressee.

* * * * *

[Revise the text of renumbered item 1.8.3c to read as follows:]

c. c. The CMRA must enter the information provided on each PS Form 1583 and upload a clear and legible copy of each identification document into the USPS CMRA Customer Registration Database (CRD). The CMRA must maintain, at a minimum, a digital copy of a completed PS Form 1583 at the CMRA business location. The PS Form 1583 must be available at all times for examination by postal representatives and postal inspectors. Images of the primary and secondary forms of identification do not need to be retained at the CMRA after they are uploaded into the CMRA Customer Registration Database. If, upon review by the Postal Service the image uploaded is not clear and legible, the CMRA will be notified to promptly collect and upload a replacement image.

[Delete renumbered item 1.8.3d and renumber items e through j as items d through i.]

* * * * *

[Renumber renumbered items h and i as items j and k and add new items h and i to read as follows:]

h. The CMRA must ensure all its addressees (customers) have a current PS Form 1583 on file and updated as necessary in the USPS CMRA Customer Registration Database. Updates shall include the entry of termination dates for any PMBs closed in the previous quarter. Any expired, illegible, or unclear identification or address document uploaded into the CMRA Customer Registration Database shall be considered not in compliance.

i. The CMRA must certify in the USPS CMRA Customer Registration Database each quarter (due on January 15th, April 15th, July 15th, and October 15th), that every PS Forms 1583 it has submitted is current, all termination dates have been updated and no identification documents are expired.

[Revise the last sentence of renumbered item j to read as follows:]

j. * * * The proper notification must be in writing outlining the specific violation(s) with a 30-day period to comply.

* * * * *

[Revise the text of 1.8.3 by adding a new item l to read as follows:]

l. The Chief Postal Inspector or their designee may issue an emergency mail withholding order to withhold mail to any PMB Holder that is suspected of utilizing a CMRA and/or PMB for any activity that is in violation of United

States Code Title 18 or Title 39 and that the mail be returned to sender, forwarded to the mail recovery center, or otherwise in accordance with a court order. The CMRA must give the mail addressed to the withheld PMB to the letter carrier or return it to the Post Office responsible for delivery to the CMRA the next business day after receipt.

1.8.4 Addressee and CMRA Agreement

In delivery of the mail to the CMRA, the addressee and the CMRA agree that:

[Revise the text of renumbered 1.8.4a by adding new second through fifth sentences to read as follows:]

a. * * * The CMRA must write the date of termination on its copy of PS Form 1583. The CMRA must enter the date of termination in the USPS CMRA Customer Registration Database as soon as practical. The CMRA must retain the endorsed copies of PS Forms 1583 for 6 months after the termination date. PS Forms 1583 filed at the CMRA business location must be available at all times for examination by postal representatives and the postal inspectors.

[Revise the text of item b by adding a new second through sixth sentences to read as follows:]

* * * The remail of mail intended for the addressee (customer) is the responsibility of the CMRA. This includes at least a 6-month period after the termination date of the agency relationship between the CMRA and the addressee. The addressee (customer) shall provide the remail address (or email if correspondence is scanned for digital delivery) on PS Form 1583. The remail address shall be entered into the USPS CMRA Customer Registration Database. If the addressee collects their mail in person at the CMRA but elects to have their mail remailed for the 6-month post-termination period, the CMRA shall record this remail address on their copy of PS Form 1583 and enter this remail address in the USPS CMRA Customer Registration Database with the date of termination. * * *

* * * * *

[Revise the text of renumbered 1.8.4 by deleting item d and renumbering items e through g as items d through f.]

[Revise the text of renumbered item d by deleting the second and third sentences.]

* * * * *

[Deleted renumbered 1.8.5, Office Business Center Acting as a CMRA, in its entirety.]

* * * * *

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–10536 Filed 5–18–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0307; FRL–10965–02–R3]

Determination of Attainment by the Attainment Date for the 2012 Annual Fine Particulate Matter Standard; Pennsylvania; Allegheny County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Allegheny County, Pennsylvania, fine particulate matter ($PM_{2.5}$) nonattainment area (''Allegheny County $PM_{2.5}$ nonattainment area,'' ''the nonattainment area,'' or simply ''the area'') attained the 2012 annual $PM_{2.5}$ national ambient air quality standards (NAAQS or ''standard'') by its December 31, 2021, ''Moderate'' area attainment date. This determination, as required under Clean Air Act (CAA) sections 179 and 188, is based upon quality-assured, quality-controlled, and certified ambient air monitoring data for the 2019–2021 period available in EPA's Air Quality System (AQS) monitoring data repository. The area remains nonattainment for the 2012 annual $PM_{2.5}$ NAAQS until the area is redesignated to attainment.

DATES: This final rule is effective on June 20, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0307. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Action

Following promulgation of a new or revised NAAQS, EPA is required under CAA section 107(d) to designate areas as attaining or not attaining the NAAQS. Those nonattainment areas are also classified by degree of nonattainment. Under subpart 4 of part D of title I of the CAA, EPA designates areas found to be violating or contributing to violation of the $PM_{2.5}$ NAAQS as nonattainment and classifies them initially as Moderate nonattainment. Effective April 15, 2015, EPA designated Allegheny County, Pennsylvania, as Moderate nonattainment for the 2012 annual $PM_{2.5}$ NAAQS based on ambient monitoring data that showed the area was above the 12.0 micrograms per cubic meter (μg/m^3) primary standard for the 2011–2013 monitoring period, based on the area's design value.[1] A design value (DV) is the 3-year average NAAQS metric that is compared to the NAAQS level to determine when a monitoring site is or is not meeting the NAAQS. The specific methodologies for calculating whether the annual $PM_{2.5}$ NAAQS is met at each eligible monitoring site in an area are found in the Code of Federal Regulations (CFR), at 40 CFR part 50, appendix N, section 4.1.

Sections 179(c)(1) and 188(b)(2) of the CAA require EPA to determine whether a $PM_{2.5}$ nonattainment area attained by the applicable attainment date, ''based on the area's air quality as of the attainment date.'' Generally, this determination of whether an area's air quality meets the $PM_{2.5}$ NAAQS by the attainment date is based upon the most recent three years of complete, certified data gathered at eligible monitoring sites in accordance with 40 CFR 58.9. Section 188(c)(1) of the CAA requires that states with areas designated as Moderate $PM_{2.5}$ nonattainment areas provide for attainment in the area as expeditiously as practicable, but no later than the end

[1] 80 FR 2206 (January 15, 2015).

of the sixth calendar year after designation. For areas initially designated under the 2012 annual $PM_{2.5}$ NAAQS, this attainment date was December 31, 2021.[2]

On February 8, 2023 (88 FR 8249), EPA published a proposed determination that the Allegheny County, Pennsylvania $PM_{2.5}$ nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by its December 31, 2021, ''Moderate'' area attainment date, for the reasons set forth in that proposed rulemaking. EPA's determination is based upon quality assured, quality controlled, and certified ambient air monitoring data for the 2019–2021 period preceding the December 2021 attainment date. That data is available in EPA's AQS ambient air quality monitoring database. We explained in our proposed determination that, if finalized, the action would fulfill EPA's statutory obligation to determine whether the Allegheny County $PM_{2.5}$ nonattainment area attained the NAAQS by the Moderate attainment date. Further explanation of the specific details of and rationale for our determination that the nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by the statutory attainment date are explained in the proposed rule and will not be restated here.

EPA received one public comment letter in response to the February 8, 2023, notice of proposed rulemaking (NPRM) that was submitted jointly by three environmental advocacy organizations (The Clean Air Council, The Environmental Integrity Project, and Citizens for Pennsylvania's Future). A summary of the comments received is set forth below. The full text of the comments is available in the docket for this action.

II. EPA's Response to Comments Received

Comment: The proposed attainment determination for the Allegheny County $PM_{2.5}$ nonattainment area is a step in the EPA's process of evaluating whether to approve a subsequent state request for redesignation of the nonattainment area to attainment, per 42 U.S.C. 7407(d)(3)(E). If EPA finalizes this proposed determination of attainment by the attainment date, the commenters' recommend that EPA not take action on the Commonwealth's November 29, 2022 request under CAA section 107(d)(3)(E) to redesignate the Allegheny County nonattainment area to attainment for the 2012 annual $PM_{2.5}$ NAAQS until EPA finishes its reconsideration of the $PM_{2.5}$ NAAQS set by the 2020 final decision on the primary (*i.e.,* health-based) and secondary (*i.e.,* welfare-based) PM NAAQS.[3] EPA published its proposed reconsideration of the December 2020 $PM_{2.5}$ NAAQS on January 27, 2023. The reconsideration proposed revising the primary annual $PM_{2.5}$ standard by lowering the level from 12.0 μg/m³ to within the range of 9.0 to 10.0 μg/m³, while taking comment on alternative annual standard levels as low as 8.0 μg/m³ and up to 11.0 μg/m³.[4] The commenters state that recent ambient air quality monitoring data obtained since the December 31, 2021, attainment date would likely require EPA to designate the area as nonattainment under the proposed revised annual $PM_{2.5}$ NAAQS, regardless of the final NAAQS level EPA establishes, because all of the proposed NAAQS values in the reconsideration are lower than the 2012 $PM_{2.5}$ annual NAAQS of 12.0 μg/m³. The commenters contend that taking separate action on a redesignation request under the 2012 annual $PM_{2.5}$ NAAQS would be a waste of EPA resources and could endanger public health and welfare in the interim period between any potential redesignation to attainment under the 2012 annual $PM_{2.5}$ NAAQS and potential, future designation under a newly revised PM NAAQS.

Response: EPA thanks the commenters for their considered comments. However, the comments do not provide a reason for EPA to not make a final determination of attainment by the attainment date, for the reasons explained below.

First, EPA's determination whether a nonattainment area has attained the NAAQS by the established attainment date is a nondiscretionary, statutory duty placed on EPA by CAA section 179(c)(1), which requires that ''as expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than six months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.'' CAA section 188(b)(2) also places a nondiscretionary duty on EPA to determine, within six months following the applicable attainment date for a PM nonattainment area, whether the area attained the standard by that date. A judicial action has been filed by an environmental advocacy organization alleging that EPA has failed to perform this mandatory duty by the June 30, 2022 date required by CAA section 188(b)(2).[5] EPA is taking final action on the determination of attainment by the attainment date to fulfill a statutory obligation, which is an independent statutory requirement that applies regardless of pending redesignation requests or any revision to the NAAQS.

As such, comments related to Pennsylvania's November 29, 2022 submission requesting redesignation of the Allegheny County $PM_{2.5}$ nonattainment area to attainment are outside the scope of this action. This determination of attainment by the attainment date satisfies EPA's obligations under CAA sections 179 and 188 of the CAA to determine, ''based on the area's air quality as of the attainment date,'' whether the area attained the standard by that date. EPA's approval of a state's request to change the legal designation of an area from nonattainment to attainment for a specific NAAQS is subject to different statutory criteria. See CAA section 107(d)(3)(E).

Similarly, comments regarding air quality monitoring data and their relationship to potential future NAAQS are outside the scope of this action. Under CAA sections 179(c)(1) and 188(b)(2), EPA is making its determination of attainment by the December 31, 2021, Moderate area attainment date based on the area's ambient air quality monitoring data as of the attainment date.

The PM NAAQS reconsideration is the subject of a separate, proposed EPA action, that took public comment until March 28, 2023. Information with respect to health or welfare impacts of PM or PM precursors at levels below the current NAAQS should have been submitted to the docket for the PM NAAQS reconsideration.[6]

In conclusion, EPA has a nondiscretionary duty to determine whether a Moderate $PM_{2.5}$ nonattainment area has attained by the December 31, 2021, Moderate attainment date. The purpose of this action is to ascertain whether the area attained the 2012 annual $PM_{2.5}$ NAAQS by the Moderate area deadline, and if not, to ''bump up'' the area to Serious.

[2] 40 CFR 51.1004(a)(1).

[3] The final action is EPA's December 2020 final action on its review of the PM NAAQS. This final action retained the primary and secondary PM NAAQS without revision, including the $PM_{2.5}$ annual standard of 12.0 μg/m³. 85 FR 82684 (December 18, 2020).

[4] Proposed rule titled ''Reconsideration of the National Ambient Air Quality Standards for Particulate Matter,'' 88 FR 5558 (January 27, 2023).

[5] *Center for Biological Diversity, et al.,* v. *Michael S. Regan,* Civil Action No. 4:23–cv–00148–JST, (N.D. CA, January 12, 2023).

[6] Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, Proposed Rule (88 FR 5558, January 27, 2023).

This determination of attainment by the attainment date is independent of any future EPA action on a state's request for redesignation of the area to attainment, or from future revision by EPA of the PM NAAQS.

Comment: The commenter contends that air quality monitoring data gathered subsequent to the December 31, 2021, Moderate area attainment date for the Allegheny County nonattainment area shows concerning $PM_{2.5}$ levels (though at monitored levels that do not show a violation of the NAAQS). Further, the commenters express concern that data from the Federal Equivalent Method (FEM) monitor at the Liberty Monitor Site shows significantly higher $PM_{2.5}$ concentrations than data from the Federal Reference Method (FRM) monitor used to determine the 2019–21 design value. Using only data from the Liberty FEM monitor from the 2019 to 2021 period, the commenter claims that the design value calculated using the appendix N methodology would result in an annual PM design value of 12.7 μg/m³, which is above the 2012 annual $PM_{2.5}$ standard of 12.0 μg/m³.

Response: As explained above, section 179(c)(1) of the CAA requires that EPA make this determination ''based on the area's air quality as of the attainment date.'' The air quality monitoring data as of December 31, 2021, show that the area attained the NAAQS by that date. Additionally, certified air quality monitoring data in AQS for 2022 (subsequent to the attainment date of December 31, 2021), shows that the area continues to attain the 2012 annual $PM_{2.5}$ NAAQS.

Regarding the claim that data from the FEM collocated with the Liberty FRM shows consistently higher levels of PM than the FRM in the years 2019 through 2021, EPA notes that the methodology for performing the $PM_{2.5}$ design value calculation is set forth at 40 CFR part 50 (National Primary and Secondary Air Quality Standards), appendix N (Interpretation of National Ambient Air Quality Standards for $PM_{2.5}$), at section 3.0 (Requirements for Data Use and Data Reporting for Comparisons with the NAAQS for $PM_{2.5}$). The $PM_{2.5}$ FRM monitor is designated as the primary monitor at the Liberty site, with the FEM monitor and a second FRM monitor designated as collocated monitors; therefore, the design value calculation is based on the primary FRM data but shall be augmented with the collocated FEM and FRM data when the primary FRM data is missing.[7] The purposes of both the Liberty FRMs and the FEM are described in section 10.2 of the Allegheny County Health Department's Air Quality Monitoring Network Plan for 2021,[8] and these purposes are consistent with the methodology in 40 CFR part 50, appendix N. EPA may not deviate from 40 CFR part 50, appendix N, and Allegheny County's 2021 Air Monitoring Network Plan approved pursuant to 40 CFR 58.10 when calculating the design value for this determination of attainment. Following the methodology in appendix N results in a 2019–2021 $PM_{2.5}$ annual design value for the Liberty monitoring site of 11.2 μg/m³, which is less than the 2012 annual $PM_{2.5}$ NAAQS of 12.0 μg/m³.

III. Final Action

For the reasons discussed in detail in the proposed rulemaking and summarized herein, EPA is taking final action under CAA sections 179(c)(1) and 188(b)(2) to determine that the Allegheny County $PM_{2.5}$ nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by its December 31, 2021, attainment date. This action fulfills EPA's statutory obligation under CAA sections 179(c)(1) and 188(b)(2) to determine whether the Allegheny County $PM_{2.5}$ nonattainment area attained the NAAQS by the attainment date. This determination does not constitute a redesignation to attainment. The Allegheny $PM_{2.5}$ nonattainment area will remain designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS until such time as the EPA determines, pursuant to sections 107 and 175A of the CAA, that the Allegheny $PM_{2.5}$ nonattainment area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan showing that the area will continue to meet the standard for 10 years.

IV. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action constitutes a determination of attainment of the 2012 annual $PM_{2.5}$ NAAQS based on air quality monitoring data and does not impose additional requirements. For that reason, this determination of attainment:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further

[7] 40 CFR part 50, appendix N, section 3.0(c) provides that, ''The default dataset for $PM_{2.5}$ mass concentrations for a site shall consist of the measured concentrations recorded from the designated primary monitor(s) . . . .'' It is only ''[i]f a valid daily value is not produced by the primary monitor for a particular day (scheduled or otherwise), but a value is available from a collocated monitor,'' that data from the collocated monitor(s) should be used to augment the site's data per 40 CFR part 50, appendix N, section 3.0(d).

[8] ''Air Monitoring Network Plan for Calendar Year 2021,'' Allegheny County Health Department, July 1, 2020, pp.42–44.

defines the term fair treatment to mean that ‘‘no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.’’ Due to the nature of the action being taken, this action is expected to have neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ‘‘major rule’’ as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2023. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action to determine that the Allegheny County nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by its attainment date may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. Amend § 52.2056 by adding paragraph (p) to read as follows:

§ 52.2056 Determinations of attainment.

* * * * *

(p) Based on air quality data for the 3-year period 2019 to 2021, EPA has determined that the Allegheny County nonattainment area attained the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of December 31, 2021. Therefore, EPA has met the requirement pursuant to Clean Air Act (CAA) sections 179(c) and 188(b)(2) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. The Allegheny County $PM_{2.5}$ nonattainment area is therefore not subject to the consequences for failing to attain, pursuant to CAA section 179(d).

[FR Doc. 2023–10728 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0957; FRL–10543–02–R9]

Partial Approval, Conditional Approval, and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, conditionally approving in part, and disapproving in part a state implementation plan (SIP) revision submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA or ‘‘Act’’) for the implementation, maintenance, and enforcement of the 2015 national ambient air quality standards (NAAQS) for ozone. As part of this action, we are reclassifying a region of the State for emergency episode planning purposes with respect to ozone. Finally, we are approving a regulatory revision into the Nevada SIP.

DATES: This rule is effective June 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0957. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, Planning Section (AIR–2–1), U.S. Environmental Protection Agency, Region IX, (415) 947–4126, *Law.Nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ‘‘we,’’ ‘‘us,’’ and ‘‘our’’ refer to the EPA.

Table of Contents

I. Background

A. Statutory Requirements

Section 110(a)(1) of the CAA requires each state to submit to the EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP revision that provides for the implementation, maintenance, and enforcement of such NAAQS.

Section 110(a)(2) of the CAA contains the infrastructure SIP requirements, which generally relate to the information, authorities, compliance assurances, procedural requirements, and control measures that constitute the ''infrastructure'' of a state's air quality management program. These infrastructure SIP requirements (or ''elements'') required by section 110(a)(2) are as follows:

- *Section 110(a)(2)(A):* Emission limits and other control measures.
- *Section 110(a)(2)(B):* Ambient air quality monitoring/data system.
- *Section 110(a)(2)(C):* Program for enforcement of control measures and regulation of new and modified stationary sources.
- *Section 110(a)(2)(D)(i):* Interstate pollution transport.
- *Section 110(a)(2)(D)(ii):* Interstate pollution abatement and international air pollution.
- *Section 110(a)(2)(E):* Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- *Section 110(a)(2)(F):* Stationary source monitoring and reporting.
- *Section 110(a)(2)(G):* Emergency episodes.
- *Section 110(a)(2)(H):* SIP revisions.
- *Section 110(a)(2)(J):* Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection.
- *Section 110(a)(2)(K):* Air quality modeling and submittal of modeling data.
- *Section 110(a)(2)(L):* Permitting fees.
- *Section 110(a)(2)(M):* Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) section 110(a)(2)(C), to the extent it refers to permit programs required under part D (nonattainment new source review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. NAAQS Addressed by This Final Rule

On October 26, 2015, the EPA promulgated a revised NAAQS for ozone (''the 2015 ozone NAAQS''), triggering a requirement for states to submit infrastructure SIPs within three years of promulgation of the revised NAAQS. The 2015 ozone NAAQS revised the 2008 8-hour ozone NAAQS by lowering the primary and secondary 8-hour ozone standards from 75 parts per billion (ppb) to 70 ppb.[1]

The Nevada Department of Environmental Protection (NDEP) made a submittal addressing the infrastructure SIP requirements for the 2015 ozone NAAQS on September 28, 2018 (''Nevada's Infrastructure SIP Submittal'').[2] It included separate sections for Clark County [3] and Washoe County.[4] We refer to each individual section as that agency's or County's portion of the submittal. In accordance with CAA section 110(k)(1)(B), the infrastructure SIP became complete by operation of law on March 28, 2019.

C. EPA's Proposal

1. Approvals and Partial Approvals

(a) Infrastructure SIP Requirements

On January 11, 2023, we proposed to approve and partially approve Nevada's Infrastructure SIP Submittal for the requirements of the following sections of the CAA: [5 6]

- *110(a)(2)(A):* Emission limits and other control measures.
- *110(a)(2)(B):* Ambient air quality monitoring/data system.
- *110(a)(2)(C) (in part):* Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
- *110(a)(2)(D) (in part, see below):* Interstate Pollution Transport.
  - 110(a)(2)(D)(i)(II) (in part)—interference with PSD (prong 3) (approval for Clark County only).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement (approval for Clark County only) and international air pollution (full approval).
- *110(a)(2)(E):* Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- *110(a)(2)(F):* Stationary source monitoring and reporting.
- *110(a)(2)(G):* Emergency episodes.
- *110(a)(2)(H):* SIP revisions.
- *110(a)(2)(J) (in part):* Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, full approval for Clark County), and PSD and visibility protection (full approval for Clark County only).
- *110(a)(2)(K):* Air quality modeling and submission of modeling data.
- *110(a)(2)(L):* Permitting fees.
- *110(a)(2)(M):* Consultation/participation by affected local entities.

(b) Proposed Approval of a State Provision Into the Nevada SIP

As part of our proposed action on Nevada's Infrastructure SIP Submittal, we proposed to approve a state regulation into the Nevada SIP. Specifically, we proposed to approve into the SIP a new version of Nevada Administrative Code (NAC) 445B.22097, which revises the 8-hour ozone standard in the Nevada standards table from 0.075 to 0.070 parts per million (ppm) to be consistent with the 2015 ozone NAAQS and deletes the ''National Standards'' and ''Method'' columns because both are for reference only and are often out-of-date compared to the referenced federal regulations.

2. Conditional Approvals

The EPA proposed to conditionally approve portions of the NDEP and Washoe County Infrastructure SIP Submittals addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS based on commitments from NDEP and Washoe County to adopt and submit specific enforceable measures to address the deficiencies identified in our proposed rulemaking.[7]

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[1] 80 FR 65292 (October 26, 2015).

[2] Although NDEP submitted Nevada's Infrastructure SIP Submittal electronically on September 28, 2018, the submittal letter is dated October 1, 2018, from Greg Lovato, Administrator, Nevada Division of Environmental Protection, to Mike Stoker, Regional Administrator, U.S. EPA Region IX, RE: ''The Nevada State Implementation Plan for the 2015 Primary and Secondary Ozone NAAQS.''

[3] Letter dated September 12, 2018, from Marci Henson, Director, Clark County Department of Air Quality, to Greg Lovato, Administrator, Nevada Division of Environmental Protection, RE: ''Clark County Portion of the Nevada Infrastructure State Implementation Plan for the 2015 Ozone NAAQS.''

[4] Letter dated August 28, 2018, from Charlene Albee, Director, Washoe County Health District Air Quality Management Division, to Greg Lovato, Administrator, Nevada Division of Environmental Protection, Subject: ''2015 Ozone National Ambient Air Quality Standard Infrastructure State Implementation Plan (SIP).''

[5] 88 FR 1537 (January 11, 2023).

[6] All approvals are full approvals for NDEP, Clark County, and Washoe County except where noted otherwise.

[7] Letter dated September 9, 2022, from Greg Lovato, Administrator, Nevada Division of Environmental Protection, to Martha Guzman, Regional Administrator, U.S. EPA Region IX, Re: ''Request for Conditional Approval of Nevada's Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ and 2015 Ozone National Ambient Air Quality Standards.'' and Letter dated September 2, 2022, from Greg Lovato, Administrator, Nevada Division of Environmental Protection to Martha Guzman, Regional Admin, Re: Nevada's Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard dated September 9, 2022 that enclosed the letter from Francisco Vega, Director, Air Quality Management Division, Washoe County Health Division to Greg Lovato, Administrator, Nevada Division of Environmental Protection and Martha Guzman, EPA, Re: ''Request for Conditional

Continued

3. Partial Disapprovals

The EPA proposed to partially disapprove Nevada's Infrastructure SIP Submittal with respect to the following infrastructure SIP requirements:

• *110(a)(2)(C) (in part):* Regulation of new and modified stationary sources (disapproval for NDEP and Washoe County).
• *110(a)(2)(D)(i)(II) (in part):* interference with PSD (prong 3) (disapproval for NDEP and Washoe County).
• *110(a)(2)(D)(ii) (in part):* interstate pollution abatement (disapproval for NDEP and Washoe County).
• *110(a)(2)(J) (in part):* PSD (disapproval for NDEP and Washoe County).

Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, the EPA noted that the proposed disapproval, if finalized, would have no Federal Implementation Plan (FIP) consequences, as both agencies already implement the Federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.

4. Reclassification

We proposed to retain the Priority I classification for the Las Vegas Intrastate Air Quality Control Regions (AQCR) and Priority III classification for the Nevada Intrastate AQCR. We proposed to reclassify the Northwest Nevada Intrastate AQCR from Priority III to Priority I for ozone. Priority I regions are required to have SIP-approved emergency episode plans, which are also called ''contingency plans.''

5. Deferred Action

The EPA did not propose action on the interstate transport visibility requirements of 110(a)(2)(D)(i)(II), which is also called Prong 4 of the interstate transport requirements. On August 12, 2022, NDEP withdrew the Prong 4 element in the Nevada's Infrastructure SIP Submittal and submitted a revised Prong 4 element with the State's Regional Haze Plan for the 2nd Planning Period.[8] The EPA intends to act on the revised Prong 4 element when we act on Nevada's Regional Haze Plan for the 2nd Planning Period and is therefore not acting on the requirement as part of this action.

Additionally, the EPA did not propose action on the following CAA requirements because they are addressed in separate rulemakings:[9]

• 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
  ○ 110(a)(2)(D)(i)(I)—significant contribution to a nonattainment area (prong 1).
  ○ 110(a)(2)(D)(i)(I)—significant contribution to a maintenance area (prong 2).

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on February 10, 2023. During this period, the EPA received one anonymous comment. The full text of the comment is available in the docket for this rulemaking.

The comment recommended that the federal government take immediate action to clean the air and suggested that the state of Utah has failed to clean the air in valley areas like Salt Lake and the Uinta Basin. Additionally, the comment states there is a water crisis and the federal government needs to take leadership. After reviewing the comment, the EPA has determined that the comment fails to raise issues germane to our proposed finding that the State of Nevada largely meets the infrastructure SIP requirements of section 110(a)(2) of the Act, which only evaluated the State's ability to implement, maintain, and enforce the 2015 Ozone NAAQS. Therefore, we have determined that this comment does not necessitate a response, and the EPA will not provide a specific response to the comment in this document.

III. Final Action

A. Partial Approvals, Conditional Approvals, and Partial Disapprovals

Under CAA section 110(a), we are partially approving and partially disapproving Nevada's Infrastructure SIP submittal for the 2015 Ozone NAAQS. Specifically, we are fully approving the submittal for the requirements of CAA sections:

• *110(a)(2)(A):* Emission limits and other control measures.
• *110(a)(2)(B):* Ambient air quality monitoring/data system.
• *110(a)(2)(C) (in part):* Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
• *110(a)(2)(D) (in part, see below):* Interstate Pollution Transport.
  ○ 110(a)(2)(D)(i)(II) (in part)—interference with PSD (prong 3) (approval for Clark County only).
  ○ 110(a)(2)(D)(ii) (in part)—interstate pollution abatement (approval for Clark County only) and international air pollution (full approval).
• *110(a)(2)(E):* Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
• *110(a)(2)(F):* Stationary source monitoring and reporting.
• *110(a)(2)(G):* Emergency episodes.
• *110(a)(2)(H):* SIP revisions.
• *110(a)(2)(J) (in part):* Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, full approval for Clark County), and PSD and visibility protection (full approval for Clark County only).
• *110(a)(2)(K):* Air quality modeling and submission of modeling data.
• *110(a)(2)(L):* Permitting fees.
• *110(a)(2)(M):* Consultation/participation by affected local entities.

The EPA is taking final action to conditionally approve the NDEP and Washoe County portions of Nevada's Infrastructure SIP Submittal addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2015 Ozone NAAQS.

We are taking final action to disapprove Nevada's Infrastructure SIP Submittal with respect to the following infrastructure SIP requirements:

• *110(a)(2)(C) (in part):* Regulation of new and modified stationary sources (disapproval for NDEP and Washoe County).
• *110(a)(2)(D)(i)(II) (in part):* interference with PSD (prong 3) (disapproval for NDEP and Washoe County).
• *110(a)(2)(D)(ii) (in part):* interstate pollution abatement (disapproval for NDEP and Washoe County).
• *110(a)(2)(J) (in part):* PSD (disapproval for NDEP and Washoe County).

Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, this final disapproval action has no FIP consequences, as both agencies implement the Federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.

B. Approval of an Updated Nevada State-Wide Provision

In this final action, the EPA is also approving into the Nevada SIP revisions

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Approval of Nevada's Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ and 2015 Ozone National Ambient Air Quality Standards.''

[8] See letter dated August 12, 2022, from Greg Lovato, Administrator, Nevada Department of Environmental Protection, to Martha Guzman, Regional Administrator, EPA Region IX, Subject: ''The Nevada State Implementation Plan for the Regional Haze Rule for the Second Planning Period; Withdrawal and Replacement of Elements of the 2012 $PM_{2.5}$ NAAQS and 2015 Ozone NAAQS Infrastructure SIPs.''

[9] 88 FR 9336 (February 13, 2023).

to the Nevada Administrative Code (NAC). The EPA is approving a new version of NAC 445B.22097, which revises the 8-hour ozone standard in the Nevada standards table from 0.075 to 0.070 parts per million (ppm) to be consistent with the 2015 ozone NAAQS. The updated provisions strengthen the SIP or clarify certain terms in the SIP, as discussed in our proposed rulemaking, and meet the requirements of CAA sections 110(a)(2), 110(l), and 193. Therefore, the EPA is approving the submitted revised rule into the Nevada SIP as proposed.

C. Reclassification and Exemption of AQCRs for Emergency Episode Planning

This final rule retains the classification of the Las Vegas Intrastate AQCRs as Priority I and the classification of the Nevada Intrastate AQCR as Priority III for emergency episodes. This rule reclassifies the Northwest Nevada Intrastate AQCR to Priority I.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference as described in Section III.B. and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action is approving in part, conditionally approving in part, and disapproving in part a state implementation plan as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: May 15, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD—Nevada

■ 2. Amend § 52.1470 as follows:

■ a. In paragraph (c), amend table 1 by:

■ i. Under the table heading ''Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—General Provisions'', revise the entry for ''445B.22097''.

■ b. In paragraph (e), in the table under the heading ''AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA'', add the entries ''The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Demonstration of Adequacy, excluding the cover letter; the part addressing the requirements of CAA 110(a)(2)(D)(i)(I); and Appendices'', ''The Clark County Portion of the State Implementation Plan to meet the Ozone Infrastructure SIP Requirement of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP; the part of the submittal addressing the requirements of CAA 110(a)(2)(D)(i)(I); and Attachment A'', and ''The Washoe County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP, the part of the submittal addressing the requirements of CAA 110(a)(2)(D)(i)(I), and all Attachments and Appendices.'' after the entry ''The Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$ Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP and all Attachments and Appendices''.

The revisions and additions read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NEVADA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * * * *				
Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—General Provisions				
* * * * * * *				
445B.22097	Standards of quality for ambient air.	05/16/2018	[INSERT **Federal Register** CITATION], 05/19/2023.	Most recently approved version was submitted on 12/11/15.
* * * * * * *				

* * * * *

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA [1]				

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	*
The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Demonstration of Adequacy, excluding the cover letter; the part addressing the requirements of CAA 110(a)(2)(D)(i)(I); and Appendices.	State-wide within NDEP jurisdiction.	9/28/18	[INSERT **Federal Register** CITATION], 05/19/2023.	NDEP "Infrastructure" SIP for the 2015 Ozone NAAQS.
The Clark County Portion of the State Implementation Plan to meet the Ozone Infrastructure SIP Requirement of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP; the part of the submittal addressing the requirements of CAA 110(a)(2)(D)(i)(I); and Attachment A.	Clark County	9/28/18	[INSERT **Federal Register** CITATION], 05/19/2023.	Clark County "Infrastructure" SIP for the 2015 Ozone NAAQS.
The Washoe County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP the part of the submittal addressing the requirements of CAA 110(a)(2)(D)(i)(I), and all Attachments and Appendices.	Washoe County	9/28/18	[INSERT **Federal Register** CITATION], 05/19/2023.	Washoe County "Infrastructure" SIP for the 2015 Ozone NAAQS.
* *	*	*	* *	*

■ 3. Section 52.1472 is amended by revising paragraph (k) to read as follows:

§ 52.1472 Approval status.

* * * * *

(k) *2015 8-hour ozone NAAQS.* The SIP submittal from October 1, 2018, is disapproved for Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the NDEP, Clark County, and Washoe County portions of the Nevada SIP submission. The Nevada state implementation plan (SIP) submittal on October 1, 2018 is partially disapproved for the prevention of significant deterioration-related portions of Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP. CAA element 110(a)(2)(J) for public notification is conditionally approved for NDEP and Washoe County.

* * * * *

[FR Doc. 2023–10657 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0594; FRL–10970–01–OCSPP]

Various Fragrance Components in Pesticide Formulations; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of various fragrance components listed in Unit II of this document when they are used as inert ingredients in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils when the end-use concentration does not exceed 100 parts per million (ppm). Verto Solutions, on behalf of The Clorox Company, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of these various fragrance components, when used in accordance with the terms of the exemptions.

DATES: This regulation is effective May 19, 2023. Objections and requests for hearings must be received on or before July 18, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0594, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0594 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 18, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0594, by one of the following methods:

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

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

II. Petition for Exemption

In the **Federal Register** of February 11, 2020 (85 FR 7708) (FRL–10005–02), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11316) by Verto Solutions on behalf of The Clorox Company, 4900 Johnson Dr., Pleasanton, CA 94588. The petition requested that 40 CFR 180.940(a) be amended by establishing exemptions from the requirement of a tolerance for residues of 1,3,3-trimethyl-2-norbornanyl acetate (CAS Reg. No. 13851–11–1); 1H-Indole (CAS Reg. No. 120–72–9); 2,6-Octadien-1-ol, 3,7-dimethyl-,(Z)- (CAS Reg. No. 106–25–2); 2-Decenal (CAS Reg. No. 3913–71–1); 2-Hexenal, (2E)- (CAS Reg. No. 6728–26–3); 2-Methyl-3-(p-isopropylphenyl)propionaldehyde (CAS Reg. No. 103–95–7); 2-Methyl-4-phenyl-2-butanol (CAS Reg. No. 103–05–9); 2-Phenylpropionaldehyde (CAS Reg. No. 93–53–8); 2-Phenylpropionaldehyde dimethyl acetal (CAS Reg. No. 90–87–9); α-Pinene (CAS Reg. No. 80–56–8); β-Caryophyllene (CAS Reg. No. 87–44–5); Bicyclo(2.2.1)heptan-2-ol, 1,3,3-trimethyl- (CAS Reg. No. 1632–73–1); Bicyclo(2.2.1)heptan-2-ol, 1,7,7-trimethyl-,propanoate, exo- (CAS Reg. No. 2756–56–1); Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene- (CAS Reg. No. 127–91–3); Butanoic acid, 1,1-dimethyl-2-phenylethyl ester (CAS Reg. No. 10094–34–5); Celery seed oil (CAS Reg. No. 8015–90–5); Citronellal (CAS Reg. No. 106–23–0);Cyclohexene, 1-methyl-4-(1-methylethylidene)- (CAS Reg. No. 586–62–9); Dimethylbenzylcarbinyl acetate (CAS Reg. No. 151–05–3); Elemi oil (Canarium spp.) (CAS Reg. No. 8023–89–0); Ethyl (2E,4Z)-2,4-decadienoate (CAS Reg. No. 3025–30–7); Galbanum oil (Ferula spp.) (CAS Reg. No. 8023–91–4); γ -Terpinene (CAS Reg. No. 99–85–4); Isoborneol (CAS Reg. No. 124–76–5); Isobornyl acetate (CAS Reg. No. 125–12–2); Labdanum oil (Cistus spp.) (CAS Reg. No. 8016–26–0); laevo-Bornyl acetate (CAS Reg. No. 5655–61–8); Mace oil (Myristica fragrans Houtt.) (CAS Reg. No. 8007–12–3); Methyl 2-nonenoate (CAS Reg. No. 111–79–5); Methyl 2-nonynoate (CAS Reg. No. 111–80–8); Methyl anthranilate (CAS Reg. No. 134–20–3); Methyl heptine carbonate (CAS Reg. No. 111–12–6); Methyl N-methylanthranilate (CAS Reg. No. 85–91–6); Nerolidol (isomer unspecified) (CAS Reg. No. 7212–44–4); Nona-2-trans-6-cis-dienal (CAS Reg. No. 557–48–2); Oil of lemon (CAS Reg. No. 8008–56–8); Oil of lemongrass (CAS Reg. No. 8007–02–1); Oils, clove (CAS Reg. No. 8000–34–8); Oils, ginger (CAS Reg. No. 8007–08–7); Oils, grapefruit (CAS Reg. No. 8016–20–4); Oils, lime (CAS Reg. No. 8008–26–2); Oils, orange, sweet, terpene-free (CAS Reg. No. 68606–94–0); Olibanum oil (Boswellia spp.) (CAS Reg. No. 8016–36–2); Oxacycloheptadec-10-ene-2-one (CAS Reg. No. 28645–51–4); p-Cymene (CAS Reg. No. 99–87–6); Phenol, 2-methoxy-4-(2-propenyl)- (CAS Reg. No. 97–53–0); p-Methylanisole (CAS Reg. No. 104–93–8); Tangerine oil (Citrus reticulata blanco) (CAS Reg. No. 8008–31–9); Ylang-ylang oils (CAS Reg. No. 8006–81–3); when used as inert ingredients (fragrance components) in pesticide formulations applied to food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment with end-use concentrations not to exceed 100 ppm. That document referenced a summary of the petition prepared by Verto Solutions on behalf of The Clorox Company, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents;

and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance, FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA's consideration in making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among other factors.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the various fragrance components identified in Unit II of this document, including exposure resulting from the exemptions established by this action. EPA's assessment of exposures and risks associated with these various fragrance components follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by the various fragrance components identified in Unit II, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies, are discussed in this unit.

The Agency assessed these fragrance components via the Threshold of Toxicological Concern (TTC) approach as outlined by the European Food Safety Authority (EFSA) in their 2019 guidance document on the use of TTC in food safety assessment. Information regarding the database of studies and chemicals used to derive TTCs are reviewed therein. The TTC approach has been used by the Joint Expert Committee on Food Additives of the United Nations' (U.N.) Food and Agriculture Organization and the World Health Organization (JECFA), the former Scientific Committee on Food of the European Commission, the European Medicines Agency, and EFSA.

Information from JECFA reports as well as predictive toxicology using the Organisation for Economic Co-operation and Development (OECD) Quantitative Structure-Activity Relationships (QSAR) Toolbox was used to confirm that the fragrances listed in Unit II have low carcinogenic potential and are thus good candidates for the application of the TTC method. Although 27 chemicals had *in silico* carcinogenicity alerts, JECFA concluded and EPA concurs that all fragrances listed in Unit II have low carcinogenic potential, based on *in vitro* and/or *in vivo* genotoxicity studies available on the chemical or structurally related chemicals. Therefore, the TTC method can be applied to these fragrances.

TTCs are derived from a conservative and rigorous approach to establish generic threshold values for human exposure at which a very low probability of adverse effects is likely. By comparing a range of compounds by Cramer Class (classes I, II, and III which correspond to the probability of low, moderate and high toxicity) and NOEL (no-observed-effect-level), fifth percentile NOELs were established for each Cramer Class as ''Human Exposure Thresholds''. These values were 3, 0.91 and 0.15 mg/kg/day for classes I, II, and III, respectively.

B. Toxicological Points of Departure/ Levels of Concern

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

The human exposure threshold value for threshold (*i.e.,* non-cancer) risks is based upon Cramer structural class. All of the fragrance components listed in Unit II are in Cramer Class I, which is defined as chemicals of simple structure and efficient modes of metabolism, suggesting low oral toxicity. Therefore, the NOEL of 3 mg/kg/day is selected as the point of departure for all exposure scenarios assessed (chronic dietary, incidental oral, dermal and inhalation exposures).

C. Exposure Assessment

1. *Dietary exposure.* In evaluating dietary exposure to each of the fragrance components listed in Unit II (*e.g.,* ingesting foods that come in contact with surfaces treated with pesticide formulations containing these fragrance components, and drinking water exposures), EPA considered exposure under the proposed exemptions at a concentration not to exceed 100 ppm for each of the listed fragrance components as well as any other sources of dietary exposure. EPA assessed dietary exposures from the fragrance components listed in Unit II in food as follows:

The dietary assessment for food contact sanitizer solutions calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI). The assessment considered application rates, residual solution or quantity of solution remaining on the treated surface without rinsing with potable water, surface area of the treated surface which comes into contact with food, pesticide migration fraction, and body weight. These assumptions are based on U.S. Food and Drug Administration guidelines.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

The fragrance components listed in Unit II may be used as inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home. The Agency conducted a conservative assessment of potential residential exposure by assessing various fragrance components in disinfectant-type uses (indoor scenarios). The Agency's assessment of adult residential exposure combines high-end dermal and inhalation handler exposure from indoor hard surface, wiping, and aerosol spray uses. The Agency's assessment of children's residential exposure includes total post-application exposures associated with contact with treated indoor surfaces (dermal and hand-to-mouth exposures).

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

EPA has not found the fragrance components listed in Unit II to share a common mechanism of toxicity with any other substances, nor do they appear to produce a toxic metabolite produced by other substances. For the purposes of the tolerance exemptions established in this rule, therefore, EPA has assumed that the fragrance components listed in Unit II do not have common mechanisms of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Additional Safety Factor for the Protection of Infants and Children

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

The FQPA SF has been reduced to 1X in this risk assessment because clear NOELs and LOELs were established in the studies used to derive the endpoints (which included developmental and reproductive toxicity studies), maternal and developmental-specific 5th percentile NOELs indicate low potential for offspring susceptibility, and the conservative assumptions made in the exposure assessment are unlikely to underestimate risk.

E. Aggregate Risks and Determination of Safety

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

1. *Acute aggregate risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effects resulting from a single oral exposure were identified and no acute dietary endpoint was selected for any of the fragrance components listed in Unit II. Therefore, these fragrance components are not expected to pose an acute risk.

2. *Short-term aggregate risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For residential handler short-term exposure scenarios, MOEs ranged from 140 to 2,500, while for residential post-application exposure scenarios, MOEs ranged from 380 to 7,400. These MOEs are greater than the level of concern (LOC) of 100 and therefore are not of concern. The short-term aggregate MOE is 109 for adults and 135 for children, which are greater than the LOC of 100 and therefore are not of concern.

3. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, the fragrance components listed in Unit II are not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk

assessment for evaluating intermediate-term risk for these fragrance components.

4. *Chronic aggregate risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to the fragrance components listed in Unit II from food and water will utilize 19% of the cPAD for the U.S. population and 48% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic residential exposure to residues of these fragrance components is not expected. Therefore, the chronic aggregate risk is equal to the chronic dietary exposure for children 1 to 2 years old (48% of the cPAD).

5. *Aggregate cancer risk for U.S. population.* There is low concern for genotoxicity/carcinogenicity in humans for the fragrance components listed in Unit II of this document. Therefore, the assessment under the TTC value for non-cancer risks is protective for all risks, including carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to residues of the fragrance components listed in Unit II.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of the fragrance components listed in Unit II of this document in or on any food commodities. EPA is, however, establishing limitations on the amount of these fragrance components that may be used in antimicrobial pesticide formulations. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that contains these fragrance components in excess of 100 ppm in the final pesticide formulation.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established for residues of the various fragrance components listed in Unit II of this document when used as inert ingredients (fragrance components) in pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils with an end-use concentration not to exceed 100 ppm under 40 CFR 180.940(a).

VII. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 12, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. Section 180.940 is amended by adding in alphabetical order the following inert ingredients to table 1 to paragraph (a):

■ a. Bicyclo(2.2.1)heptan-2-ol, 1,3,3-trimethyl-

■ b. Bicyclo(2.2.1)heptan-2-ol, 1,7,7-trimethyl-,propanoate, exo-

■ c. Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene-

■ d. Butanoic acid, 1,1-dimethyl-2-phenylethyl ester

■ e. β-Caryophyllene

■ f. Celery seed oil

■ g. Citronellal

■ h. Cyclohexene, 1-methyl-4-(1-methylethylidene)-

■ i. p-Cymene

■ j. 2-Decenal

■ k. Dimethylbenzylcarbinyl acetate
■ l. Elemi oil (Canarium spp.)
■ m. Ethyl (2E,4Z)-2,4-decadienoate
■ n. Galbanum oil (Ferula spp.)
■ o. 2-Hexenal, (2E)-
■ p. 1H-Indole
■ q. Isoborneol
■ r. Isobornyl acetate
■ s. Labdanum oil (Cistus spp.)
■ t. laevo-Bornyl acetate
■ u. Mace oil (Myristica fragrans Houtt.)
■ v. Methyl anthranilate
■ w. Methyl heptine carbonate
■ x. 2-Methyl-3-(p-isopropylphenyl)propionaldehyde
■ y. Methyl N-methylanthranilate
■ z. Methyl 2-nonenoate
■ aa. Methyl 2-nonynoate
■ bb. 2-Methyl-4-phenyl-2-butanol
■ cc. p-Methylanisole
■ dd. Nerolidol (isomer unspecified)
■ ee. Nona-2-trans-6-cis-dienal
■ ff. 2,6-Octadien-1-ol, 3,7-dimethyl-,(Z)-
■ gg. Oil of lemon
■ hh. Oil of lemongrass
■ ii. Oils, clove
■ jj. Oils, ginger
■ kk. Oils, grapefruit
■ ll. Oils, lime
■ mm. Oils, orange, sweet, terpene-free
■ nn. Olibanum oil (Boswellia spp.)
■ oo. Oxacycloheptadec-10-ene-2-one
■ pp. Phenol, 2-methoxy-4-(2-propenyl)-
■ qq. 2-Phenylpropionaldehyde
■ rr. 2-Phenylpropionaldehyde dimethyl acetal
■ ss. α-Pinene
■ tt. Tangerine oil (Citrus reticulata blanco)
■ uu. γ-Terpinene
■ vv. 1,3,3-trimethyl-2-norbornanyl acetate
■ ww. Ylang-ylang oils.

The additions read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
Bicyclo(2.2.1)heptan-2-ol, 1,3,3-trimethyl-	1632–73–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Bicyclo(2.2.1)heptan-2-ol, 1,7,7-trimethyl-,propanoate, exo-.	2756–56–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene-	127–91–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Butanoic acid, 1,1-dimethyl-2-phenylethyl ester	10094–34–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
β-Caryophyllene	87–44–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Celery seed oil	8015–90–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Citronellal	106–23–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Cyclohexene, 1-methyl-4-(1-methylethylidene)-	586–62–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
p-Cymene	99–87–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Decenal	3913–71–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Dimethylbenzylcarbinyl acetate	151–05–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Elemi oil (Canarium spp.)	8023–89–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Ethyl (2E,4Z)-2,4-decadienoate	3025–30–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Galbanum oil (Ferula spp.)	8023–91–4	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
2-Hexenal, (2E)-	6728–26–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
1H-Indole	120–72–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isoborneol	124–76–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isobornyl acetate	125–12–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Labdanum oil (Cistus spp.)	8016–26–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
laevo-Bornyl acetate	5655–61–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Mace oil (Myristica fragrans Houtt.)	8007–12–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl anthranilate	134–20–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl heptine carbonate	111–12–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Methyl-3-(p-isopropylphenyl)propionaldehyde	103–95–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl N-methylanthranilate	85–91–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl 2-nonenoate	111–79–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl 2-nonynoate	111–80–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Methyl-4-phenyl-2-butanol	103–05–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
p-Methylanisole	104–93–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Nerolidol (isomer unspecified)	7212–44–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Nona-2-trans-6-cis-dienal	557–48–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2,6-Octadien-1-ol, 3,7-dimethyl-,(Z)-	106–25–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oil of lemon	8008–56–8	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
Oil of lemongrass	8007–02–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oils, clove	8000–34–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oils, ginger	8007–08–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, grapefruit	8016–20–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oils, lime	8008–26–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, orange, sweet, terpene-free	68606–94–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Olibanum oil (Boswellia spp.)	8016–36–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oxacycloheptadec-10-ene-2-one	28645–51–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Phenol, 2-methoxy-4-(2-propenyl)-	97–53–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Phenylpropionaldehyde	93–53–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Phenylpropionaldehyde dimethyl acetal	90–87–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
α-Pinene	80–56–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Tangerine oil (Citrus reticulata blanco)	8008–31–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
γ-Terpinene	99–85–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
1,3,3-trimethyl-2-norbornanyl acetate	13851–11–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Ylang-ylang oils	8006–81–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *

* * * * *

[FR Doc. 2023–10550 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0173; FRL–10940–01–OCSPP]

Benzyl Alcohol; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of benzyl alcohol (CAS Reg. No. 100–51–6) when used as an inert ingredient (adjuvant) in pesticide formulations applied to crops and raw agricultural commodities pre- and post-harvest, limited to no more than 60% by weight in the pesticide formulation. Landis International, Inc., on behalf of CJB Applied Technologies, LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of benzyl alcohol when used in accordance with the terms of the exemption.

DATES: This regulation is effective May 19, 2023. Objections and requests for hearings must be received on or before July 18, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0173, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0173 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 18, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0173, by one of the following methods:

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

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

II. Petition for Exemption

In the **Federal Register** of March 24, 2023 (88 FR 17778) (FRL–10579–02), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11504) by Landis International, Inc., 3185 Madison Highway, Valdosta, GA 31603, on behalf of CJB Applied Technologies, LLC, 1105 Innovation Way, P.O. Box 5724, Valdosta, GA 31603. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of benzyl alcohol (CAS Reg. No. 100–51–6) when used as an inert ingredient (adjuvant) in pesticide formulations applied to crops and raw agricultural commodities pre- and post-harvest, limited to no more than 60% by weight in the pesticide formulation. That document referenced a summary of the petition prepared by Landis International, Inc., on behalf of CJB Applied Technologies, LLC, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own):

solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by benzyl alcohol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Benzyl alcohol exhibits low acute oral and inhalation toxicity, while acute dermal toxicity is moderate. Benzyl alcohol shows none to weakly irritating properties to the skin, but it is not a skin sensitizer.

Based on the available repeated-dose toxicity data on benzyl alcohol, the central nervous system is a major target organ in rats and mice. In rats, mortality, staggering, labored breathing, lethargy, and necrosis of the denta gyrus of the hippocampus are seen at 800 mg/kg/day following dosing in a 13-week oral toxicity study via gavage. In mice, lethargy is seen at 500 mg/kg/day and staggering at 800 mg/kg/day following dosing in a 16-day and 13-week oral toxicity study via gavage, respectively. Maternal (mortality, reduced body weights, clinical signs of neurotoxicity) and offspring (reduced bodyweight) toxicity are seen in mice at 750 mg/kg/day in a developmental toxicity study. No adverse effects are seen in rats at 750 mg/kg/day in a developmental toxicity study. Due to the neurotoxic effects seen following dosing in the 13-week oral toxicity studies in rats and mice at 800 mg/kg/day, the highest doses tested in the chronic/carcinogenicity studies were 400 and 200 mg/kg/day for rats and mice, respectively. No systemic toxicity or treatment related tumors were seen in rats or mice at these doses.

Neurotoxicity studies are not available for review. However, signs of neurotoxicity are seen in mice (lethargy) at 500 mg/kg/day following dosing in a 16-day oral toxicity study and in rats (staggering, labored breathing, lethargy, necrosis of the denta gyrus of the hippocampus) and mice (staggering) at 800 mg/kg/day in a 13-week oral toxicity study via gavage. However, clear NOAELs were established for these effects and the acute population adjusted dose (aPAD) of 4 mg/kg/day and the chronic population adjusted dose (cPAD) of 2 mg/kg/day are protective of the neurotoxic effects observed at 500 mg/kg/day and 800 mg/kg/day in the rat and mouse, respectively. Therefore, there is no concern for neurotoxicity.

Immunotoxicity studies are not available for review. Thymic congestion, hemorrhage, and atrophy were observed at 800 mg/kg/day in rats in a 13-week oral toxicity study via gavage. However, a clear NOAEL was established for these effects and the cPAD (2 mg/kg/day) is protective of the immunotoxic effects observed at 800 mg/kg/day. Therefore, there is no concern for immunotoxicity.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for benzyl alcohol used for human health risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BENZYL ALCOHOL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 400 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 4.00 mg/kg/day aPAD = 4.0 mg/kg/day	13-week oral toxicity—Rat LOAEL = 800 mg/kg/day based on clinical signs of neurotoxicity after a single dose.
Chronic dietary (All populations)	NOAEL= 250 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 2.0 mg/kg/day cPAD = 2.0 mg/kg/day	16-day oral toxicity—Mouse LOAEL = 500 mg/kg/day based on lethargy.
Incidental oral short- and intermediate-term (1 to 30 days and 1 to 6 months).	NOAEL= 250 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	16-day oral toxicity—Mouse LOAEL = 500 mg/kg/day based on lethargy.
Dermal short- and intermediate-term (1 to 30 days and 1 to 6 months).	NOAEL = 250 mg/kg/day (dermal absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	16-day oral toxicity—Mouse LOAEL = 500 mg/kg/day based on lethargy.
Inhalation short- and intermediate-term (1 to 30 days and 1 to 6 months).	Inhalation study NOAEL= 1,072 mg/m^3 (~328 mg/kg/day) (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	4-week inhalation toxicity study—Rat LOAEL was not established.
Cancer (Oral, dermal, inhalation)	Benzyl alcohol is not expected to be carcinogenic, based on available data for benzyl alcohol in rats and mice, and a cancer dietary exposure assessment was not performed.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to benzyl alcohol, EPA considered exposure that may occur from the existing and proposed uses of benzyl alcohol. EPA assessed dietary exposures from benzyl alcohol in food as follows:

i. Acute exposure. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring after a single exposure. Such effects were identified for benzyl alcohol. Acute dietary (food only) exposure and risk assessments were conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 4.02. This software uses 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The current assessment includes every commodity available in DEEM.

ii. Chronic exposure. In conducting the chronic dietary exposure assessment using DEEM–FCID, Version 4.02, EPA used food consumption information from USDA's 2005–2010 NHANES/WWEIA. As to residue levels in food, no residue data were submitted for benzyl alcohol. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Update to D361707: Dietary Exposure and Risk Assessments for the Inerts.'' (12/21/2021) and can be found at *https://www.regulations.gov* in docket ID number EPA–HQ–OPP–2018–0090.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest levels of tolerances would be no higher than the concentration of the active ingredient. However, to account for the proposed uses of benzyl alcohol up to 60% by weight in pesticide formulations, EPA assumed a 60% concentration of benzyl alcohol in the dietary exposure assessment.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for benzyl alcohol, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, for lawn and garden pest control, indoor pest control, termiticides, flea and tick control on pets and hard surface disinfection on walls, floors, tables).

Benzyl alcohol is currently approved for use as an inert ingredient in antimicrobial pesticides and nonfood use pesticides (*e.g.,* pet spot-on treatments; products used on lawn, turf, or gardens) that could result in short-term residential exposure. Although benzyl alcohol is approved as an active ingredient, currently there are no active registrations for its use as an active ingredient. Short-term residential exposure for adults combines high-end dermal and inhalation handler exposure from indoor hard surface, aerosol sprays with high-end post-application dermal exposure from contact with treated lawns and results in an MOE of 161. Short-term residential exposure for children includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures) and results in an MOE of 540. Because EPA's level of concern (LOC) for benzyl alcohol is an MOE below 100, these MOEs are not of concern.

Intermediate-term residential exposure for adults includes high-end post-application dermal exposure from contact with treated lawns and results in an MOE of 3800. Intermediate-term residential exposure for children includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures) and results in an MOE of 2,000. Because EPA's LOC for benzyl alcohol is an MOE below 100, these MOEs are not of concern.

Benzyl alcohol is also used in products such as cosmetics and personal care products that could result in short-, intermediate- and long-term exposures. The International Fragrance Association calculated a dermal exposure of 0.042 mg/kg/day using the reported 97.5th percentile concentration based on the levels of the same fragrance ingredient in ten of the most frequently used personal care and cosmetic products (*i.e.,* anti-perspirant, bath products, body lotion, eau de toilette, face cream, fragrance cream, hair spray, shampoo, shower gel, and toilet soap). An inhalation exposure level of 0.0026 mg/kg/day was calculated based on the combined (fine fragrances, hair sprays, antiperspirants/deodorants, candles, aerosol air fresheners, and reed diffusers/heated oil plug-ins) result calculated using the Research Institute for Fragrance Material, Inc. (RIFM) 2-Box/MPPD *in silico* models, based on the International Fragrance Association (IFRA) survey results for the 97.5th percentile use in hydro alcoholics for a 60 kg individual. Total systemic exposure due to use in cosmetics and personal care products is 0.0446 mg/kg/day. The MOE is 5605. Because EPA's LOC for benzyl alcohol is an MOE below 100, this MOE is not of concern.

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

EPA has not found benzyl alcohol to share a common mechanism of toxicity with any other substances, and benzyl alcohol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that benzyl alcohol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

The Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10x is reduced to 1X for the following reasons. The toxicity database for benzyl alcohol is adequate, it contains developmental toxicity studies in the mouse and a four-generation reproduction toxicity study in the rat. No fetal susceptibility or reproduction toxicity is observed in these studies. Lethargy is observed in mice at 500 mg/

kg/day following dosing in a 16-day oral toxicity study. In a 13-week oral toxicity study, staggering, labored breathing, lethargy, and necrosis of the denta gyrus of the hippocampus were observed in rats, and staggering was observed in mice at 800 mg/kg/day. Thymic congestion, hemorrhage, and atrophy were observed in rats at 800 mg/kg/day in a 13-week oral toxicity study. However, clear NOAELs were established for these effects and the selected points of departure (PODs) are based on the neurological effects observed at 500 mg/kg/day and are protective of the immunological effects observed at 800 mg/kg/day. Therefore, there is no concern for potential neurotoxicity or immunotoxicity. Based on the adequacy of the toxicity database, the conservative nature of the exposure assessment and the lack of concern for prenatal and postnatal sensitivity, the Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10x is reduced to 1x.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to benzyl alcohol will occupy 74% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account chronic exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to benzyl alcohol from food and water will utilize 61% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

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

Benzyl alcohol may be used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to benzyl alcohol.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short-term aggregated food, water, and residential pesticide and non-pesticide exposures result in an aggregate MOE of 112 for adults. Adult residential pesticide exposure combines high-end dermal and inhalation handler exposure from indoor hard surface aerosol spray with high-end post-application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential pesticide and non-pesticide exposures result in an aggregate MOE of 123 for children. Children's residential pesticide exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). Because EPA's LOC for benzyl alcohol is an MOE below 100, these MOEs are not of concern.

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

Benzyl alcohol may be used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to benzyl alcohol.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 337 for adults. Adult residential pesticide exposure combines high-end dermal and inhalation handler exposure from indoor hard surface aerosol spray with a high-end post-application dermal exposure from contact with treated lawns. EPA has concluded the combined intermediate-term aggregated food, water, and residential pesticide and non-pesticide exposures result in an aggregate MOE of 147 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). Because EPA's LOC for benzyl alcohol is an MOE below 100, these MOEs are not of concern.

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

6. *Determination of safety.* Based on the risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to benzyl alcohol residues. More detailed information on this action can be found in the document titled "Benzyl Alcohol Human Health Risk Assessment and Ecological Effects Assessment to Support an Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations" in docket ID EPA–HQ–OPP–2021–0173.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of benzyl alcohol in or on any food commodities. EPA is establishing a limitation on the amount of benzyl alcohol that may be used in pesticide formulations. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 60% benzyl alcohol in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of benzyl alcohol (CAS Reg. No. 100–51–6) when used as an inert ingredient (adjuvant) in pesticide formulations applied to crops and raw agricultural commodities pre- and post-harvest under 40 CFR 180.910, limited to no more than 60% by weight in the pesticide formulation.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 15, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.910, amend table 1 to the section by adding, in alphabetical order, the inert ingredient "Benzyl alcohol (CAS Reg. No. 100–51–6)" to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* * *	* * *	*
Benzyl alcohol (CAS Reg. No. 100–51–6)	60% by weight in pesticide formulation	Adjuvant.
* * *	* * *	*

[FR Doc. 2023–10709 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–64

[GSPMR Case 2022–105–1; Docket No. GSA–GSPMR–2022–0017; Sequence No. 1]

RIN 3090–AK62

Enterprise Data & Privacy Management Office (IDE); Social Security Number Fraud Prevention

AGENCY: Enterprise Data & Privacy Management Office (IDE), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending our Privacy Act Rules to implement the Social Security Number Fraud Prevention Act of 2017. The revisions would clarify and update the language of procedural requirements pertaining to the inclusion of Social Security account numbers (SSNs) on documents that GSA sends by mail.

DATES: Effective June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Speidel, Chief Privacy Officer (General Services Administration), Enterprise Data & Privacy Management Office (IDE). Email address for the GSA Privacy Office is *gsa.privacyact@gsa.gov.* Telephone number is 202–969–5830 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite GSPMR Case 2022–105–1.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is issuing a final rule amending 41 CFR part 105–64, GSA Privacy Act Rules, to implement the Social Security Number Fraud Prevention Act of 2017. The proposed rule was published on October 7, 2022, at 87 FR 60955.

The Social Security Number Fraud Prevention Act of 2017 (the Act) (Pub. L. 115–59; 42 U.S.C. 405 note), which was signed on September 15, 2017, restricts Federal agencies from including individuals' SSNs on documents sent by mail, unless the head of the agency determines that the inclusion of the SSN on the document is necessary (section 2(a) of the Act). The Act requires agency heads to issue regulations specifying the circumstances under which inclusion of a SSN on a document sent by mail is necessary. These regulations, which must be issued not later than five years after the date of enactment, shall include instructions for the partial redaction of SSNs where feasible, and shall require that SSNs not be visible on the outside of any package sent by mail (section 2(b) of the Act). This rule would revise the Agency regulations under the Privacy Act (41 CFR part 105–64), consistent with these requirements in the Act. The rule would clarify the language of procedural requirements pertaining to the inclusion of SSNs on documents that the Agency sends by mail. These revisions are necessary to implement the Social Security Number Fraud Prevention Act of 2017, which restricts the inclusion of Social Security account Numbers (SSNs) on documents sent by mail by the Federal Government.

II. Discussion of the Final Rule

A. Summary of Significant Changes

There are no significant changes, as the comments were supportive of the rule. GSA did change the regulatory text from the published proposed rule, but the changes are not substantive (merely reorganizing the prior content for readability and to avoid redundancy).

B. Analysis of Public Comments

GSA received two (2) comments from the public. GSA acknowledge the respondents' support for the rule. GSA did not change the regulatory text of the definition from the published proposed rule.

Comment: The proposed amendment by GSA is positively impacting US citizens' information security by protecting their personal information, specifically their social security number. This rule defines the requirement to not include a social security number unless determined necessary by the head of the agency. However, clarification is required on the process to obtain a determination by the head of the agency such that there is not an increased burden on business to understand this process. In addition, the rule states that social security numbers can only be included if required by law. It is the best interest of the people to identify which laws would require this information and validate that is still true. In general, this rule provides minimal economic impact to the people, provides increased information security and we are in support if the above items are clarified in the documentation. If no such clarification is provided, it could lead to confusion and economic impact for businesses trying to follow the rule. Finally, cyber security should be as important as mail fraud and this rule should also apply to electronic transmission of documents with social security numbers. As a US citizen I recommend applying this in both written and electronic communication since the fraud of my identity could mean substantial harm financially and emotionally for myself.

Response: Although the Comment requests more clarity around the process for determining which documents are on the Un-redacted SSN Mailed Document List, GSA finds that the rule as written provides appropriate flexibility to arrive at a list in implementation of the statute while involving necessary agency stakeholders such as GSA–IT and GSA Office of the General Counsel (OGC). Subsequent to the posting of the final rule, GSA intends to make available on the GSA publicly facing privacy page (*www.gsa.gov/reference/gsa-privacy-program*) the specific documents for which the inclusion of the Social Security account number (SSN) is determined to be necessary to fulfill a compelling Agency business need. GSA will review on a regular basis the laws and authorities that would require an un-redacted social security number on mailed documents. GSA handles the transmission of electronic documents in accordance with the Privacy Act.

Comment: The proposed rule will provide members of government agencies with greater clarity. I believe providing a clear understanding pertaining to the inclusion of full Social Security numbers on documents sent via U.S. mail will provide confidence in senders and receivers of these correspondences. Many Americans have been victims of identity theft, the steps and feelings involved in the process are uncomforting and time consuming. After reviewing the proposed standards for agencies to follow I believe they are easy to comprehend and leave little room for question. I thank you for investing time and efforts into this proposed rule.

Response: GSA acknowledges this comment.

C. Expected Cost Impact to the Public

GSA does not expect the final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule.

III. Executive Orders 12866 and 13563

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

IV. Congressional Review Act

OIRA has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration 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. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

VI. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSPMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Part 105–64

Privacy.

Robin Carnahan,

Administrator, General Services Administration.

For the reasons set forth in the preamble, GSA amends 41 CFR part 105–64 as set forth below:

PART 105–64—GSA PRIVACY ACT RULES

■ 1. The authority citation for 41 CFR part 105–64 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Amend § 105–64.001 by adding in alphabetical order the definition ''Un-redacted SSN Mailed Documents Listing'' to read as follows:

§ 105–64.001 What terms are defined in this part?

* * * * *

Un-redacted SSN Mailed Documents Listing (USMDL) means the Agency approved list, as posted at *www.gsa.gov/reference/gsa-privacy-program,* designating those documents for which the inclusion of the Social Security account number (SSN) is determined to be necessary to fulfill a compelling Agency business need when the documents are requested by individuals outside the Agency or other Federal agencies, as determined by the Administrator or their designee.

■ 3. Amend § 105–64.107 by adding paragraph (c) to read as follows:

§ 105–64.107 What standards of conduct apply to employees with privacy-related responsibilities?

* * * * *

(c) (1) The following conditions must be met for the inclusion of an unredacted (full) SSN or partially redacted (truncated) SSN on any document sent by mail on behalf of the agency:

(i) The inclusion of the full SSN or truncated SSN of an individual must be required or authorized by law; and

(ii) The document must be listed on the USMDL.

(2) Even when the conditions set forth in paragraph (c)(1) are met, employees shall redact SSNs in all documents sent by mail where feasible. Where full redaction is not possible due to agency requirements, partial redaction to create a truncated SSN shall be preferred to no redaction.

(3) In no case shall any complete or partial SSN be visible on the outside of any envelope or package sent by mail or displayed on correspondence that is visible through the window of an envelope or package.

[FR Doc. 2023–10279 Filed 5–18–23; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

45 CFR Chapter XVI

Issuance of Updated Audit Guide for Recipients and Auditors and Appendices for Audits of Legal Services Corporation Recipients

AGENCY: Legal Services Corporation, Office of Inspector General.

ACTION: Notice of issuance of final audit guide and appendices.

SUMMARY: The Legal Services Corporation (LSC) Office of Inspector General (OIG) updated its *Audit Guide for Recipients and Auditors, (LSC OIG Audit Guide),* the Compliance Supplement (Appendix A), and Appendices B–E. The Audit Guide must be used for audits for fiscal years ending September 30, 2023, and thereafter. *The LSC OIG Audit Guide* was published in December 1996 and is outdated. Aside from one Audit Bulletin issued in 1997, it has not been updated since. Appendix A, Compliance Supplement for Audits of LSC Recipients was updated in April 2016. The *LSC OIG Audit Guide* and appendices required revisions to incorporate changes to LSC regulations, auditing standards, and other guidelines that have changed. The changes are to enhance clarity in guidance and suggested audit procedures.

DATES: The *LSC OIG Audit Guide* will be effective on October 1, 2023, for audits of LSC grantee fiscal years ending on or after September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Grace Nyakoe, Audit Director, Legal Services Corporation Office of Inspector General, 3333 K Street NW, Washington, DC 20007, (202) 295–1662, or *gnyakoe@oig.lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. History of This Action

Updating the *LSC OIG Audit Guide* and appendices is essential in fulfilling the OIG's responsibility for oversight. The *LSC OIG Audit Guide* and appendices provide a uniform approach for audits of LSC recipients and describe recipients' responsibilities with respect to such audits. Audits of recipients are to be performed in accordance with this *LSC OIG Audit Guide* and Compliance Supplement (Appendix A), among other criteria. The *LSC OIG Audit Guide* and the Compliance Supplement give auditors guidance in planning and performing audits to accomplish audit objectives.

Significant changes include eliminating the requirement to classify LSC recipients as High-Risk; adding a requirement to consider all LSC funds as major programs regardless of spending threshold; and revising suggested audit procedures for changes to 45 CFR 1635—Timekeeping Requirement. The appendix designations have changed because we eliminated the appendices addressing a Sample Audit Agreement and Guide for Procurement of Audit Services. Information on these topics is readily available from other sources.

II. General Discussion of Comments

The LSC OIG received three comments during the public comment period. All comments were on the Compliance Supplement. The commenters were McBride, Lock & Associates, LLC, the LSC OIG Quality Control Review contractor; Eide Bailly, an LSC recipient Independent Public Accountant; and the National Legal Aid & Defender Association (NLADA), a non-LSC funded non-profit, in cooperation with experienced Chief Financial Officers of legal aid organizations and the NLADA Regulations Committee. One NLADA comment strongly supported the proposed change to the Overview section stating that LSC recipients do not have to be classified as high risk. All comments generally support the LSC OIG changes.

We also received comments for changes to accounting guidance. OIG does not issue accounting guidance and forwarded these comments to LSC. NLADA strongly supported the LSC OIG's decision to no longer require that LSC recipients be classified as High Risk. The NLADA also commented that it generally does not favor blanket requirements but does not oppose the LSC OIG requirement that all LSC funds be classified as major programs. LSC recipients must have an annual audit and classifying the funds as a major program does not add a burden to LSC recipients. One comment was to correct a typographical error which was corrected. The remaining comments will be discussed in Section III, Detailed Discussion of Comments.

III. Detailed Discussion of Comments—Compliance Supplement Part D

Fund Balances

Comment—The commenter, McBride Lock & Associates, stated that Part 1628 refers to an analysis of fund balance to determine whether a waiver is required to carryover LSC funds. The commenter further noted that this has been confusing for IPAs since LSC issued Program Letter 20–4, Revenue Recognition Guidance. The commentor stated that the regulatory reference uses the term fund balance, and this section should include a definition of fund balance for purposes of calculating the carryover amount.

Response—The LSC OIG agreed with this suggestion and updated the second paragraph on page 58. This section now includes the *LSC Financial Guide's,* section 3.3 definition of fund balance.

Fund Balances, Compliance Requirements Section, Third Paragraph

Comment—The commentor, Eide Bailly, suggested that the following compliance requirement be revised to include relevant regulatory language. ''Recipients may request a waiver to retain a fund balance in excess of 10% of LSC support pursuant to 45 CFR 1628.3. Absent a waiver, recipients must repay a fund balance in excess of 10% of LSC support. If a waiver of the 10% ceiling is granted, the recipient must repay any fund balance in excess of the amount permitted to be retained. (45 CFR 1628.3)

The commentor suggested the text read, ''Recipients may request a waiver to retain a fund balance in excess of 10% of LSC support pursuant to 45 CFR 1638.3. Absent a waiver, recipients must repay a fund balance in excess of 10% of LSC support. If a waiver of the 10% ceiling is granted, the recipient may retain up to the amount permitted in the waiver but must repay any fund balance in excess of the amount permitted to be retained. (45 CFR 1628.3).

Response—The LSC OIG agreed with the suggested change and updated Appendix A, Compliance Supplement.

Timekeeping, 2. Audit Procedures—Internal Control b

Comment—The commentor, McBride Lock & Associates suggested changing the language in the Part 1635—Timekeeping Requirement section from, ''. . . how the recipient has revised its timekeeping policies to comply . . .'' to ''. . . how the recipient has established its timekeeping policies to comply . . .''

Response—The LSC OIG agreed with the comment and made this change.

Timekeeping, Section 2b, Audit Procedures—Internal Control and Section 3, Audit Procedures—Substantive

Comment—NLADA suggested two clarifications in the Part 1635—Timekeeping Requirement section. The comment was to add a reference to the *LSC Financial Guide in Section 2b* noting that the *LSC Financial Guide* lists timekeeping requirements. NLADA also suggested that LSC OIG clarify the ''minimum sample size of 20 timesheets'' in 3. Audit Procedures—Substantive. The suggested clarification is to be clear that one timesheet means a timesheet of one pay period for one employee.

Response—The LSC OIG agreed with these suggestions and added a reference to the *LSC Financial Guide* and added language to clarify the sample size.

For the reasons stated above, the Legal Services Corporation Office of Inspector General revises the *LSC OIG Audit Guide for Recipients and Auditors.* The revised *LSC OIG Audit Guide for Recipients and Auditors* and its appendices are available on the LSC OIG website at: *Audit Guidance (lsc.gov).*

The Audit Guide and appendices contain references to other documents, such as LSC program letters and forms. We plan to update these references as they are modified.

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

Dated: May 12, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations.

[FR Doc. 2023–10574 Filed 5–18–23; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 520, 530, 535, 540, 550, 555 and 560

[Docket No. FMC–2023–0009]

RIN 3072–AC96

Update of Existing FMC User Fees

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On March 21, 2023, the Federal Maritime Commission (Commission) published a direct final rule, which notified the public of our intent to update its current user fees and amend the relevant regulations to reflect these updates, pursuant to Office of Management and Budget (OMB) Circular A–25. The direct final rule stated that it would increase some fees to reflect increases in salaries of employees assigned to certain fee-generating services. For one service, the rule would lower fees because less-senior employees are assigned to the fee-generating activity. The rule will go into effect as scheduled.

DATES: The effective date of the direct final rule published at 88 FR 16894 on March 21, 2023, is confirmed as June 5, 2023.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5908; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission received four comments in response to the direct final rule (DFR) titled ''Update of Existing FMC User Fees.'' Three of the four comments received did not include information relevant to this rulemaking. One comment addressed the substance of the DFR. None of the comments received were significant adverse comments nor were they within the scope of the rulemaking.

In the comment from Atlantic Pacific Tariffs, Inc. (AP Tariffs), AP Tariffs states that it opposes the proposed increase in fees. However, AP Tariffs's comment is not a significant adverse comment. AP Tariffs takes issue with proposed increases in fees for new U.S.-based company license applications and argues this would exacerbate the troubling trend of predominantly foreign companies obtaining Commission registrations. The DFR cannot address this concern because the fees are the same for all applicants regardless of whether an applicant is U.S.-based or foreign. Thus, the commenter seems to be asking for different fees for U.S.-based versus foreign entities to prioritize the interests of U.S.-based companies. Because this rule does not address substantive changes to the underlying regulations and who should be subject to the fee, this argument is outside the scope of the DFR.

AP Tariffs also argues that increasing the fees would create a financial burden for aspiring American companies seeking to enter the maritime industry, would be counterproductive to fostering domestic entrepreneurship, and would exacerbate the trend of foreign entities obtaining Commission registrations at the expense of U.S. based companies. AP Tariffs argues that the Commission should reconsider any fee increases for new U.S.-based companies and prioritize the interests of U.S. based companies. All of these comments are outside the scope of the User Fees rule because they do not challenge the methodology of calculating the fees, which is the focus of this rule.

Finally, AP Tariffs argues that the Commission should incrementally increase fees as the agency does in the Inflation Adjustment of Civil Monetary Penalties rule. The Commission already increases these fees incrementally by issuing biennial updates, consistent with the guidance in OMB Circular A–25.

In the DFR, the Commission noted that ''the scope of the rulemaking is limited to the amounts charged for Commission services, and any substantive changes to the underlying regulations governing those services or related requirements would be outside this scope. Accordingly, comments on the underlying regulations and related requirements will not be considered adverse. Filed comments that are not adverse may be considered for modifications to the Commission's regulations at a future date.'' 88 FR 16894, 16896, (Mar. 21, 2023). As such, the Commission will take into consideration the changes mentioned in this comment when considering future substantive changes to the underlying regulations.

For the foregoing reasons, none of the comments received are considered significant adverse comments. The DFR will therefore go into effect as scheduled.

By the Commission.

William Cody,

Secretary.

[FR Doc. 2023–10751 Filed 5–18–23; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR–TA–2023–02; Docket No. GSA–GSAR–2023–0014; Sequence No. 1]

General Services Administration Acquisition Regulation (GSAR); Personal Identity Verification Requirements Clause Reference; Technical Amendment

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

ACTION: Technical amendment.

SUMMARY: The General Services Administration is issuing this technical amendment to amend the General Services Administration Acquisition Regulation (GSAR), in order to update a web link as the organization website has been changed since the publication of the final rule (GSAR Case 2022–G521).

DATES: Effective May 19, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Clarence Harrison at *GSARPolicy@gsa.gov* or 202–227–7051. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at *GSARegSec@gsa.gov* or 202–501–4755.

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2023, GSA amended the General Services Administration Acquisition Regulation (GSAR) through a final rule (88 FR 18074). The document contained a web link that has been updated, therefore, this technical amendment updates the CFR by correcting the link at GSAR 552.204–9 in paragraph (a).

List of Subjects in 48 CFR Part 552

Government procurement.

Jeffrey A. Koses,

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

Therefore, GSA amends 48 CFR part 552 by making the following technical amendment:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 552 continues to read as follows:

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

552.204–9 [Amended]

■ 2. Amend section 552.204–9 in paragraph (b) by removing the web link ''*https://www.gsa.gov/hspd12*'' and adding ''*https://www.gsa.gov/resources/for-federal-employees/access-gsa-facilities-and-systems-with-a-piv-card*'' in its place.

[FR Doc. 2023–10669 Filed 5–18–23; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02; RTID 0648–XD024]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2023 Red Snapper Recreational For-Hire Fishing Season in the Gulf of Mexico

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the 2023 recreational fishing season for the Federal charter vessel/headboat (for-hire) component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational for-hire component in the Gulf EEZ opens on June 1, 2023, and will close at 12:01 a.m., local time, on August 25, 2023. This closure is necessary to prevent the Federal for-hire component from exceeding its quota and to prevent overfishing of the Gulf red snapper resource.

DATES: The closure is effective at 12:01 a.m., local time, on August 25, 2023, until 12:01 a.m., local time, on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. The Federal for-hire component's red snapper annual catch target (ACT) is 9 percent below the for-hire component quota (87 FR 74014, December 2, 2022; 50 CFR 622.41(q)(2)(iii)(B)).

The red snapper for-hire component seasonal closure is projected from the component's ACT. Projecting the for-hire component's seasonal closure using the ACT reduces the likelihood of the harvest exceeding the component quota and the total recreational quota.

All weights described in this temporary rule are in round weight.

The current Federal for-hire component ACT for red snapper in the Gulf EEZ is 2,904,682 lb (1,317,542 kg) (50 CFR 622.41(q)(2)(iii)(B)). However, on February 28, 2023, NMFS published a proposed rule that would revise red snapper catch levels (88 FR 12642). If implemented, that rule would increase the Federal for-hire component ACT to 3,076,322 lb (1,395,396 kg).

The 2023 Federal Gulf red snapper for-hire fishing season has been determined to be 85 days based on NMFS' projection of the date landings are expected to reach the component ACT. The season length projections range from 69–85 days (current) to 73 to 90 days (proposed). NMFS determined that 85 days is likely to constrain harvest to the current or proposed ACT based on catch rates from the most recent 3 years (2020–2022). When using average red snapper for-hire catch rates from those years, NMFS projects that the current quota would be harvested in 85 days. When using only data from 2022, NMFS projects that the proposed quota would be harvested in 85 days. For details about the calculation of the projection for 2023, see *https://www.fisheries.noaa.gov/southeast/sustainable-fisheries/gulf-mexico-recreational-red-snapper-management.* Therefore, the 2023 recreational season for the Federal for-hire component will begin at 12:01 a.m., local time, on June 1, 2023, and close at 12:01 a.m., local time, on August 25, 2023.

On and after the effective date of the Federal for-hire component closure, the bag and possession limits for red snapper for Federal for-hire vessels are zero. When the Federal for-hire component is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal for-hire permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. In addition, a person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken under 50 CFR 622.41(q)(2)(i) and (ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the recreational red snapper quotas and ACTs, and the rule implementing the requirement to close the for-hire component when its ACT is projected to be reached have already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because many for-hire operations book trips for clients in advance and require as much notice as NMFS is able to provide to adjust their business plans to account for the fishing season.

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

Dated: May 16, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–10777 Filed 5–16–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 97

Friday, May 19, 2023

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

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2023–0075]

Abnormal Occurrence Reporting

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed limited revision to policy statement; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing limited revisions to its policy statement on reporting abnormal occurrences (AO) to Congress. The proposed revisions are to the medical event criteria for determining events that are significant from the standpoint of public health or safety.

DATES: Submit comments by August 17, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); 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–2023–0075. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *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.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Eastern time (ET), Federal workdays; telephone: 301–415–1677.

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: Edward Harvey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3704; email: *Edward.Harvey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information.

Please refer to Docket ID NRC–2023–0075 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0075.
- *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 ''ADAMS Public Documents'' and then 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.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments.

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0075 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. Background

Section 208 of the Energy Reorganization Act of 1974, as amended (Pub. L. 93–438), defines an AO as an unscheduled incident or event that the NRC determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress annually. As required by section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. The Commission must also widely disseminate the AO report to the public within 15 days of publishing the AO report to Congress.

Abnormal Occurrence Reporting

The Commission has developed the AO policy statement to comply with Section 208 of the Energy Reorganization Act of 1974, as amended. The annual AO report is developed based upon the criteria in the AO policy statement. The AO report keeps Congress and the public informed of unscheduled incidents or events that the Commission considers significant from the standpoint of public health or safety. This policy addresses a range of health or safety concerns and applies to incidents and events involving a single individual, as well as those having an overall impact on the general public. The AO criteria set out in the policy use a reporting threshold so that only those events considered significant from the standpoint of public health or safety are reported to Congress.

Applicability

Implementation of section 208 of the Energy Reorganization Act of 1974, as amended, ''Abnormal Occurrence Reports,'' involves the conduct of Commission business and does not establish requirements for licensees or certified facilities. The reports cover certain unscheduled incidents or events related to the manufacture, construction, or operation of a facility or conduct of an activity subject to the requirements of parts 20, 30 through 37, 39, 40, 50, 61, 70, 71, 72 or 76 of chapter I, title 10, *Code of Federal Regulations* (10 CFR).

Agreement States provide information to the NRC on incidents and events involving applicable nuclear materials in their States. Agreement States are those States that have entered into formal agreements with the NRC, pursuant to Section 274 of the Atomic Energy Act of 1954 (AEA) (Pub. L. 83–703), to regulate certain quantities of radioactive material at facilities located within their borders. Events reported by Agreement States that reach the threshold for reporting as AOs are also published in the ''Report to Congress on Abnormal Occurrences.''

Proposed Revisions

The NRC is proposing revisions to the AO criteria for medical events. The revisions to the medical event criteria improve conformance to current regulatory requirements, and reflect new developments in the new medical radiation treatments.

The NRC is requesting public comments on this policy statement at this time for medical event criteria. These proposed revisions may be found in ADAMS under Accession No. ML23123A351.

Licensee Reports

The changes to the general policy statement do not change the reporting requirements for licensees in Commission or Agreement State regulations, license conditions, or technical specifications. The licensees will continue to submit required reports on a wide range of events, including instrument malfunctions and deviations from normal operating procedures that may not be significant from the standpoint of the public health or safety but provide data useful to the Commission in monitoring operating trends of licensed facilities and in comparing the actual performance of these facilities with their design and/or licensing basis.

III. Paperwork Reduction Act

This policy statement does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

Dated: May 12, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Acting Secretary of the Commission.

[FR Doc. 2023–10538 Filed 5–18–23; 8:45 am]

BILLING CODE 7590–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2022–0013]

RIN 0960–AI71

Setting the Manner of Appearance of Parties and Witnesses at Hearings

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to update our hearing regulations by changing the terms ''video teleconference'' to ''video''; changing ''telephone'' to ''audio''; and permitting ''video'' and ''audio'' to be used as standard manners of appearance. These changes would clarify that claimants may appear for hearings remotely, using private electronic devices that we do not own, operate, or approve. The proposed changes would also make clear that a claimant may appear for a hearing using approved online video conferencing applications, rather than conferencing options using equipment that we own or approve. Additionally, while our current regulations permit us to schedule claimants to appear by telephone in limited circumstances only, we propose to schedule claimants to appear by audio without similar restrictions, if the claimant does not object to appearing in that manner. We expect that these changes would provide us and claimants with additional flexibility, which would allow us to manage our hearing process more efficiently.

DATES: To ensure that your comments are considered, we must receive them no later than July 18, 2023.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2022–0013 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the *Search* function to find docket number SSA–2022–0013. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 3rd Floor (East), Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Office of Hearings Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605–8500. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

When we determine whether a claimant is disabled under title II or title XVI of the Social Security Act (Act), we generally follow an administrative review process that consists of the following steps: an initial determination, a reconsideration, a hearing, which is held by an administrative law judge (ALJ), and Appeals Council review.[1] After completing these steps, claimants may request judicial review of our final decision by filing a civil action in a Federal district court.

As is noted above, the third step in the administrative review process is a hearing, which is held by an ALJ. Our current regulations allow us to set the time and place for a hearing, and allow us to schedule a claimant to appear in one of three ways: by video teleconferencing (VTC), in person, or by telephone.[2] We generally schedule claimants to appear in person or by VTC, based on a consideration of several factors.[3] We have traditionally used the term VTC to refer to an appearance by video using our equipment or equipment that we approve. We schedule claimants to appear by telephone in certain limited circumstances only, such as when we find an appearance by VTC or in person is not possible, or if other extraordinary circumstances prevent the claimant from appearing by VTC or in person.[4]

Under our current regulations, claimants can object to appearing by VTC. To object to appearing by VTC, claimants must notify us in writing within 30 days after the date they receive a notice advising that we may schedule them to appear by VTC. If they notify us within that period, and their residence does not change while the request for hearing is pending, we schedule them to appear at a hearing in person.[5] Our current regulations also allow us to evaluate good cause for late objections to appearing by VTC.[6]

In March 2020, we closed our offices to walk-in traffic, suspended in-person and VTC appearances, and began offering claimants an option to appear at hearings by telephone in response to the Coronavirus Disease 2019 (COVID–19) national public health emergency. We later offered claimants the additional option to appear by online video.[7] Our use of online video appearances in response to COVID–19 was the first time we allowed claimants to appear using: (1) private electronic devices (rather than our equipment or agency-approved equipment); and (2) third-party software designated by us, rather than the proprietary software approved for use on our equipment or agency-approved equipment.[8] Because of the sudden and unique circumstances of the COVID–19 national public health emergency, we would not conduct a hearing by telephone or online video unless the claimant consented to appear in that manner.

To obtain consent, we sent claimants informational notices about telephone and online video appearances as well as a written agreement form.[9] This agreement form allows claimants to indicate whether or not they agree to appear by telephone or online video.[10] As of December 2022, we have completed over 65,000 hearings by online video and 900,000 hearings by telephone.[11]

In July 2021, we began sending surveys to claimants who appeared at hearings by online video, to gauge their satisfaction with the process. We asked them to rate four statements regarding their online video experience on a scale from 1 to 5, where 1 meant ''strongly disagree'' and 5 meant ''strongly agree.'' The four statements were: (1) the instructions sent in advance were helpful; (2) it was easy to connect to my online video hearing; (3) I was satisfied with the audio quality of my online video hearing; and (4) I was satisfied with the video quality of my online video hearing. Since August 2021, the overall satisfaction score has been 4.2 or higher, and 83 percent or more of respondents in each month since then have reported an overall satisfaction rate of a 4 or 5.[12]

The changes we implemented starting in March 2020 were a direct response to the sudden and unique circumstances of the COVID–19 national public health emergency, and for that reason we set them up as temporary changes. Based on our positive experience with remote appearances during the COVID–19 national public health emergency, and in an effort to incorporate greater flexibility into our rules, we propose to make audio and video standard manners of appearance in our hearing process.

Proposed Changes and Justification

We propose to update our hearing regulations in the following ways: (1) replace the term ''video teleconference'' with ''video''; (2) replace ''telephone'' with ''audio''; and (3) make ''video'' and ''audio'' standard manners of

[1] 20 CFR 404.900(a) and 416.1400(a).

[2] 20 CFR 404.929, 404.936, 416.1429, and 416.1436.

[3] 20 CFR 404.936(c)(1) and 416.1436(c)(1).

[4] 20 CFR 404.936(c)(2) and 416.1436(c)(2). Our regulations also explain that if claimants are incarcerated and VTC is not available, we will schedule their appearance by telephone, unless we find that there are facts in the particular case that provide a good reason to schedule the appearance in person, if allowed by the place of confinement, or by VTC or in person upon release. 20 CFR 404.936(c)(3) and 416.1436(c)(3). Our regulations also permit us, in limited circumstances, to schedule the claimant's appearance by telephone to protect the safety of the public and our employees. Specifically, we may schedule the claimant to appear by telephone or VTC if the Hearing Office Chief Administrative Law Judge determines that the claimant or another individual poses a reasonable threat to the safety of our employees or other participants in the hearing. 20 CFR 404.937(b)(2) and 416.1437(b)(2). We will also schedule a claimant to appear by telephone if we have banned the claimant from any of our facilities. 20 CFR 404.937(c) and 416.1437(c).

[5] 20 CFR 404.936(d) and 416.1436(d).

[6] 20 CFR 404.936(d)(2) and 416.1436(d)(2).

[7] We began offering appearances at hearings by telephone in March 2020 and by online video in December 2020. Currently, we conduct online video appearances using a software application called ''Microsoft (MS) Teams.'' For more information, see *https://www.ssa.gov/appeals/hearing_video.html.*

[8] While we had already been allowing representatives to purchase and use agency-approved video equipment for Representative Video Hearing Project hearings, it was only in response to the COVID–19 public health emergency that we first allowed representatives to use their own equipment for video hearings, regardless of whether that equipment was agency-approved. For more information on the Representative Video Project, see Chief Judge Bulletin (CJB) 11–04 and *https://www.ssa.gov/appeals/documents/Representative_Video_Project_RVP-508.pdf.*

[9] An example of the form is available here: *https://www.ssa.gov/appeals/documents/21-158_COVID-19_HearingAgreementForm_RepresentedClaimantandRepresentative.pdf.* The original form from July 2020 provided the telephone option only. In December 2020, we updated the form to also include the online video option.

[10] Claimants can make separate selections for telephone and online video options. For example, claimants can indicate that they agree to appear by telephone but not by online video.

[11] See ''Number of Telephone and Online Video Hearings,'' in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document, available at *www.regulations.gov* as a supporting document for Docket SSA–2022–0013.

[12] July 2021 did not represent a full month of data and covered only July 16–31. For that partial month, the overall satisfaction score was 4.2 and 77.7% of people reported an overall satisfaction score of a 4 or 5. The overall satisfaction scores and percentage of people who reported an overall satisfaction score of a 4 or 5 for other months are as follows: August 2021, 4.3, 83 percent; September 2021, 4.5, 88.2 percent; October 2021, 4.4, 84 percent; November 2021, 4.4, 87 percent; December 2021, 4.5, 89.5 percent; January 2022, 4.4, 85.3 percent; February 2022, 4.4, 85.7 percent; March 2022, 4.4, 85 percent; April 2022, 4.4, 86.7 percent; May 2022, 4.5, 87.7 percent; June 2022, 4.5, 88.5 percent; July 2022, 4.4, 86.1 percent; August 2022, 4.4, 85.3 percent; and September 2022, 4.3, 83.8 percent. Note: We did not send surveys in February 2022. The data reported for that month represented surveys we sent in previous months that were submitted to us in February 2022. See Table 5, ''Claimant Satisfaction Survey Report,'' in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document available at *https://www.regulations.gov* as a supporting document for Docket SSA–2022–0013.

appearance in our hearing process. With these changes, we could schedule claimants to appear for hearings using private electronic devices that we do not own, operate, or approve and using third-party software designated by us, rather than the proprietary software approved for use on our equipment or agency-approved equipment. Additionally, these changes would allow us to schedule claimants to appear by audio without the same limitations that currently restrict our ability to schedule claimants to appear by telephone.

These proposed changes would also affect how we schedule a witness's (including a medical or vocational expert's) manner of appearance at a hearing.[13] Under our current policy, we generally direct anyone we call as a witness to appear by telephone or VTC. Under the proposed policy, we would generally direct anyone we call as a witness to appear by audio or video. As under our current policy, a witness called by the claimant would generally appear in the same manner as the claimant, unless the witness is unable to do so.[14] If the witness is unable to appear in the same manner as the claimant, we would generally direct the witness to appear by video or audio.[15]

We also propose to revise our regulations regarding scheduling the manner of appearance for individuals who appear before the Appeals Council for oral argument. Our current regulations state that the Appeals Council will determine whether an individual will appear by VTC, in person, or in certain circumstances, by telephone.[16] Similar to the changes we proposed above, we would change ''video teleconference'' to ''video'' and ''telephone'' to ''audio'' and allow video and audio as standard manners of appearance. These changes would keep the manners of appearance for oral arguments before the Appeals Council aligned with the manners of appearance for hearings before an ALJ.

Finally, we would add language to 20 CFR 404.944 and 416.1444 to clarify that an ALJ could stop a hearing temporarily and continue it at a later date if the ALJ found that one or more variables outside of our control, such as audio quality or video quality, materially affected a hearing. This option would ensure that improperly functioning technology does not preclude a claimant from receiving a full and fair hearing.

We propose these changes because our experience with almost a million telephone and online video appearances during the COVID–19 national public health emergency has shown us that additional flexibilities in setting manners of appearance are appropriate and could benefit us as well as claimants.

Because the term ''video teleconference'' or ''VTC'' in our current regulations has traditionally referred to hearings where claimants use our video equipment in a location that we assign, we propose to replace it with the broader term ''video,'' which would also include appearances by online video as well as appearances by other video technologies that may be available now or become available in the future.[17]

Similarly, the term ''telephone'' in our current regulations does not necessarily include audio appearances over the internet using software applications. The proposed definition of ''audio'' would include telephone appearances, appearances over the internet where video is not used, and appearances by other similar technologies that may be available now or become available in the future.[18] Thus, the term ''audio'' is broader than ''telephone'' because it would include telephone appearances, audio appearances over the internet where video is not used, and other similar technologies as options. For audio appearances over the internet, we would call a claimant's telephone number.

Lastly, under our current regulations, we cannot schedule claimants to appear by telephone except under certain limited circumstances, such as when we find an appearance by video teleconference or in person is not possible or other extraordinary circumstances prevent the claimant from appearing by video teleconference or in person.[19] We propose to schedule audio appearances (which include telephone appearances) without those limitations, if the claimant does not object to appearing by audio.[20]

Advantages of Video or Audio as Standard Manners of Appearance

Our proposal would benefit claimants and us in several ways: (1) there would be more ways to appear at a hearing; (2) we could balance our hearing workloads more efficiently among hearing offices; and (3) we would be prepared for future emergency events, like the COVID–19 national public health emergency, that could require us to temporarily suspend in-person or VTC hearings.

(1) More Ways To Appear at a Hearing Would Be Available

Before the COVID–19 national public health emergency, we generally scheduled claimants to appear by VTC or in person. In certain limited circumstances, we would require a claimant to appear by telephone. Our proposed regulations would allow us to schedule a claimant to appear in person, by video (which would include traditional VTC as well as online video), or by audio. Having these additional flexibilities may make it easier for many claimants to attend their hearings.

If we scheduled claimants to appear by audio or video, they could attend the hearing in their home or at another convenient location of their choice. If a claimant objected to appearing by video and also objected to appearing by audio, we would schedule that claimant to appear in person, unless we need to schedule the claimant to appear by audio in one of the limited circumstances discussed below and set forth in our proposed rule.

(2) We Could Balance Our Hearings More Efficiently Among Hearing Offices

As is discussed above, before the COVID–19 national public health emergency, we generally scheduled claimants to appear at hearings in person or by VTC in one of our facilities, using our equipment. With these proposed changes, we expect to schedule proportionally fewer in-person appearances and more appearances by audio and video than we did before the national public health emergency.

Claimants may appear by audio and video when they are located anywhere within the United States or its territories, rather than just when they are located within a hearing office's service area. Therefore, we could schedule audio and video appearances with any hearing office in the country. We expect that this added flexibility, which would allow us to schedule hearings for claimants with ALJs outside of the hearing office's service area, would help reduce overall wait and processing times across the country and

[13] See 20 CFR 404.936(c)(4) and 416.1436(c)(4).

[14] See 20 CFR 404.950(e) and 416.1450(e).

[15] As examples, if a claimant were scheduled to appear by video and a witness disagreed with the third-party terms of service associated with a video appearance, or if the witness did not have the resources to appear by video (*e.g.,* internet service was unavailable), we would consider the witness unable to appear by video.

[16] See 20 CFR 404.976(c) and 416.1476(c).

[17] Any application used to conduct hearings would comply with applicable Federal laws, regulations, and policies. We would provide notice of any new applications that we add in the future by publishing a notice, for instance in the **Federal Register** or on our website.

[18] See footnote 17.

[19] See footnote 4.

[20] As with our current rules, we would require a claimant to appear by audio in certain limited circumstances.

reduce the wait and processing time disparities that exist from region to region and office to office. Specifically, we could transfer cases where the claimant does not object to appearing by video or audio from offices or regions with larger caseloads to offices or regions with smaller caseloads, to help balance our processing times. To provide some perspective, in fiscal year 2021, under our temporary emergency procedures that permitted audio and video appearances, we transferred 16.6 percent of new hearing requests to different hearing offices, which resulted in faster dispositions and reduced wait time for claimants.[21] Similarly, in fiscal year 2022, we transferred 17.0 percent of new hearing requests to different hearing offices.[22]

We also note that, under the proposed changes, we would not have to secure a physical space for most audio and video appearances, which would simplify the scheduling process. We currently have a fixed number of hearing rooms, which we must coordinate the scheduling of among our ALJs and claimants. Under this proposed rule, we would not need to secure a physical space for many audio and video appearances because the claimants would generally appear from private locations of their choice, and ALJs would generally conduct hearings from a private location.

[21] In fiscal year 2021, we received 383,650 cases at the hearing level, and we transferred 63,702 cases to different offices to help balance workloads. See Table 1, ''Fiscal Year 2021, Summary of Permanent Transfer Cases for Workload Assistance'' and Table 3, ''Fiscal Year 2021, Caseload Analysis Report,'' in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document, available at *https://www.regulations.gov* as a supporting document for Docket SSA–2022–0013. Additionally, our average case processing time decreased from 506 days in fiscal year 2019, which was before the COVID–19 national public health emergency, to 326 days in fiscal year 2021. See Table 6, ''Average Processing Time,'' available at *https://www.regulations.gov* as a supporting document for Docket SSA–2022–0013.

[22] In fiscal year 2022, we received 349,892 cases at the hearing level, and we transferred 59,418 cases to different offices to help balance workloads. See Table 2, ''Fiscal Year 2022, Summary of Permanent Transfer Cases for Workload Assistance'' and Table 4, ''Fiscal Year 2022, Caseload Analysis Report,'' in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document, available at *https://www.regulations.gov* as a supporting document for Docket SSA–2022–0013. Additionally, our average case processing time decreased from 506 days in fiscal year 2019, which was before the COVID–19 national public health emergency, to 333 days in fiscal year 2022. See Table 6, ''Average Processing Time,'' available at *https://www.regulations.gov* as a supporting document for Docket SSA–2022–0013.

(3) We Would Be Prepared for Future Emergency Events That Could Require Temporary Suspension of In-Person or VTC Hearings

The COVID–19 national public health emergency and our experience with more localized emergencies, such as hurricanes, tornadoes, and floods, have shown that we must be prepared for unexpected circumstances. This proposed regulation would allow us to continue conducting hearings remotely—by audio or video—if we need to close any of our facilities to the public due to an emergency circumstance. That flexibility would limit disruptions to our hearing processes that might otherwise occur.

Objection to Manner of Appearance

Our current regulations allow claimants to object to appearing by VTC within 30 days after they receive the notice that we may schedule them to appear by VTC (20 CFR 404.936(d) and 416.1436(d)). If they object within that 30-day period, and their residence does not change while the request for hearing is pending, we set the hearing for a time and place at which the claimant may appear before the ALJ in person.[23]

As we do in our current VTC policy, we propose to allow claimants to object to appearing by audio, video, or both within 30 days after they receive a notice from us informing them that we may schedule them to appear by audio or video. Though this proposal mirrors our current VTC policy, it is different from the temporary process we adopted during the COVID–19 national public health emergency. Under that temporary process, we required that a claimant consent to appear at a hearing by online video or telephone. We adopted that process in response to the unique exigencies that existed during the COVID–19 national public health emergency.

Under this proposal, claimants could object to appearing at a hearing by video, audio, or both. If a claimant objected to appearing by video and also objected to appearing by audio, we would schedule that claimant to appear at a hearing in person. However, in certain limited circumstances discussed below, we would mandate an audio appearance.[24]

In our notice to claimants, we would include information about the possible manners of appearance so claimants would be able to make informed decisions about whether to object to appearing by video, audio, or both. We would also provide information about objecting to an appearance by video, audio, or both. For example, we would inform claimants that there are three types of ''video'' appearances: (1) appearing by online video with non-agency supplied electronic devices and internet connection, (2) appearing by online video in a hearing office with agency-supplied electronic devices and internet connection, and (3) appearing by traditional VTC. For the first appearance type, claimants participate by video over the internet using a third-party application from any private location they prefer within the United States or its territories if they have a compatible device, such as a computer, tablet, or smartphone, and internet connection. For the second appearance type, claimants participate by video over the internet using a third-party application from one of our hearing offices using our devices and internet connection. For the third appearance type, claimants participate in a traditional VTC hearing from a hearing office, a field office, or an appointed representative's office, if a claimant is represented, using our proprietary software approved for use on our video equipment.

[23] 20 CFR 404.936(d) and 416.1436(d).

[24] See proposed 20 CFR 404.936(c)(2) and (3), 404.937, 416.1436(c)(2) and (3), and 416.1437 for the very limited circumstances when we could mandate an audio appearance.

We would explain in our notice that a claimant would have the ability to object to each of these ways of appearing by video. Our notice would also explain what a claimant would need in order to appear in each manner, as applicable. For example, our notice would explain that to appear by online video, a claimant would need to have access to: (1) a desktop computer, laptop computer, tablet, or phone with a camera, microphone, and speakers; (2) a secure internet connection; (3) email; and (4) a quiet, private location.

Importantly, we propose to keep the current regulatory provisions for evaluating good cause for late submission of an objection, though those provisions would apply to both audio and video appearances.[25] Thus, if, after the deadline for submitting objections, a claimant objected to appearing by video, audio, or both, the ALJ would evaluate whether good cause existed for the late objection. Examples of good cause would include circumstances where the claimant disagrees with the terms of service for a third-party application or lacks the resources to appear by video.

We considered proposing a requirement that claimants specifically

[25] See proposed 20 CFR 404.936(d)(2) and 416.1436(d)(2).

consent to appear by video or audio before we would schedule one of those manners of appearance. However, our experience during the COVID–19 national public health emergency indicates that it would be problematic to adopt that type of requirement. Under our temporary COVID–19 business process, we required claimants to consent before we would schedule them to appear by telephone or online video. To obtain the claimant's consent, we contacted them or their appointed representative by telephone, or we mailed an informational notice and agreement form. However, we were unable to reach or did not receive completed forms from approximately 30 percent of claimants.[26] If a claimant did not consent to appear by telephone or online video, we had to delay scheduling a hearing until our offices reopened to the public and we resumed conducting in-person and VTC hearings. Because we did not know when we would be able to reopen our offices, we had to delay scheduling many hearings for an indefinite period. That circumstance caused delays in our hearing process. We expect that when a future emergency situation arises, whether nationally or locally, a requirement for claimant consent would similarly hinder our ability to ensure necessary continuity of service. Moreover, even absent an emergency, our experience over many years has been that it is often difficult to receive timely responses from some claimants when we ask them to contact us. Under our proposed rule, which would provide a set timeframe within which claimants could opt out of appearing by video, audio, or both, we anticipate we would be better able to limit the number of cases that we need to hold while waiting for claimants to take action. Moreover, as we discussed previously, we would also consider a good cause exception if a claimant submitted a late objection to appearing by audio, video, or both.

When We Would Require Audio Appearances

Under our current regulations, we require a claimant to appear at a hearing by telephone only in certain limited circumstances. Those circumstances exist when: (1) we find an appearance by VTC or in person is not possible;[27] (2) other extraordinary circumstances prevent the claimant from appearing by VTC or in person;[28] (3) the claimant is incarcerated and VTC is not available, unless we find that facts in the case provide a good reason to schedule an appearance in person, if allowed, or by VTC or in person upon the claimant's release;[29] or (4) when we have banned the claimant from any of our facilities.[30] Additionally, under our current regulations, we may schedule a claimant to appear by VTC or telephone when the Hearing Office Chief Administrative Law Judge (HOCALJ) determines that the claimant poses a reasonable threat to the safety of our employees or other participants in the hearing.[31] Historically, we have seldom required a claimant to appear at a hearing by telephone. When we do require a claimant to appear by telephone, because of the special circumstances that exist, we do not accept objections to that manner of appearance. We propose to keep all these current regulatory provisions, except that we would replace the word ''telephone'' with ''audio,'' and we would replace ''VTC'' with video. For audio appearances over the internet, we would call a claimant's telephone number. We would also specify that when the HOCALJ determines that a claimant poses a reasonable threat to the safety of our employees or other participants in the hearing, the HOCALJ will require the claimant to appear by audio.

Table 1: Manners of Appearance Available

The table below compares the manner of appearance options that were available before the COVID–19 national public health emergency, those that were available during the COVID–19 national public health emergency, and what would be available under our proposed regulations. It also notes whether a claimant may object to a manner of appearance or must consent to a manner of appearance.

Manner of appearance	Available before the COVID–19 national public health emergency	Available during the COVID–19 national public health emergency	Would be available under our proposed regulations
In-person	Yes (claimant cannot object)	Postponed from March 2020 through March 2022, when we began incrementally reopening our hearing offices to the public. (claimant cannot object).	Yes (claimant cannot object).
VTC	Yes (claimant can object)	Postponed from March 2020 through March 2022, when we began incrementally reopening our hearing offices to the public. (claimant can object).	Yes (under video option) (claimant can object).
Online video	No	Available as of December 2020 (claimant must consent before we will schedule that manner of appearance).	Yes (under video option) (claimant can object).
Audio (formerly ''telephone'').	Yes, but only in very limited circumstances. (claimant cannot object when required).	Available as of March 2020 (claimant must consent before we will schedule that manner of appearance, but we will require a claimant to appear by telephone in very limited circumstances).	Yes (claimant can object, unless we require the claimant to appear by audio, (called via telephone number) in very limited circumstances).

[26] See ''Percentage of Nonresponses,'' in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document available at *www.regulations.gov* as a supporting document for Docket SSA–2022–0013.

[27] 20 CFR 404.936(c)(2) and 416.1436(c)(2).

[28] *Id.*

[29] 20 CFR 404.936(c)(3) and 416.1436(c)(3).

[30] 20 CFR 404.937(c) and 416.1437(c).

[31] 20 CFR 404.937(b)(2) and 416.1437(b)(2).

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Orders 13563 and 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.,* grouping and ordering of sections, use of headings, paragraphing?

When will we start to use this rule?

We will not use this rule unless we publish a final rule in the **Federal Register** after evaluating the public comments. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Orders 13563 and 14094

We consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Orders 13563 and 14094. Therefore, OMB did not review it.

Anticipated Costs/Transfers to Our Program

The Office of the Chief Actuary estimates that there will be no significant changes in allowance rates for disability cases under the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal SSI programs due to implementation of the proposed regulation. The primary effects from implementing this proposed rule would be small cash flow effects due to conducting hearings and issuing decisions more timely. These changes would therefore be expected to result in negligible effects on scheduled OASDI benefit payments and Federal SSI payments over the period from fiscal year 2023 through fiscal year 2033.

Anticipated Administrative Cost/Savings

The Office of Budget, Finance, and Management estimates net administrative savings of less than 15 work years and $2 million annually. We anticipate a small savings for lower administrative law judge, claimant, and representative travel costs, offset some by slightly higher costs for an increase in forms returned to us by claimants.

Anticipated Qualitative Benefits

We expect that the flexibility provided by this proposal would benefit claimants and our agency in several ways. First, except when claimants object, we would be able to continue scheduling claimants to appear at hearings remotely, by video or audio. Our experience, as well as that of claimants, during the COVID–19 national public health emergency showed that remote appearances are acceptable and beneficial to our hearing process. If claimants do not object, and we schedule them to appear by video or audio, they may not incur inconveniences and could save on costs associated with transportation (*e.g.,* gas, maintenance of vehicle, bus fare), and they may save time that they would otherwise have spent traveling. Likewise, they may not need to secure a replacement caregiver if they supervise family members or others, such as children, who cannot be left alone. In addition, if claimants have difficulty leaving the house because of limited mobility or other reasons, a video or audio appearance would allow them to appear from a private location of their choice, such as their home.

This proposal would also allow us to balance our workloads more efficiently among hearing offices because we could more easily transfer cases where the claimant would be scheduled to appear by video or audio from one hearing office to another. We expect that this proposal would help us to reduce overall wait and processing times across the country and reduce the disparities that exist from region to region and office to office.

Finally, the changes proposed in these rules would allow us to be prepared for future emergency events, including localized events such as hurricanes, tornadoes, and floods, and national public health emergencies similar to COVID–19 that could require us to temporarily suspend in-person or VTC hearings.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act (PRA)

SSA already has existing OMB PRA-approved information collection tools relating to this proposed rule under OMB Control No. 0960–0671 which include: Form HA–504, Acknowledgement of Receipt (Notice of Hearing); Form HA–L83, Acknowledgement of Receipt (Notice of Hearing) Cover Letter; Form HA–55, Objection to Appearing by Video Teleconferencing; Form HA–L2, Objection to Appearing by Video Teleconferencing Cover Letter (HA–L2); and Forms HA–510 and HA–510–OP1, Waiver of Written Notice of Hearing.

The proposed rules would require revisions to Form HA–55, Objection to Appearing by Video Teleconferencing and the accompanying HA–L2, Objection to Appearing by Video Teleconferencing Cover Letter. Due to the proposed rules, we expect to revise the HA–L2 to remove the discussion of the manners of appearance, and we intend to create a new notice to address those in accordance with any final rules. The new notice would briefly explain audio and video appearances and all the modalities encompassed by audio only and video hearings. Similarly, we expect to revise Form HA–55 to provide the option to object to each of the modalities encompassed by audio and video appearances. We will also eliminate the COVID–19 Remote Hearing Options notice and the accompanying COVID–19 Remote Hearing Agreement form.

We will obtain OMB approval for these new modalities and revisions to OMB Clearance Package 0960–0671 concurrently with these final rules. The chart below shows the revised burden estimates, to be effective when we finalize the rule:

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
HA–504+ HA–504–OP1 HA–504–OP2	900,000	1	30	450,000	* $12.81	** $5,764,500
HA–L83—404.936(e); 416.1436(e)	900,000	1	30	450,000	* 12.81	** 5,764,500
HA–L83—Good cause for missing deadline—404.936(e)(1); 416.1436(e)(1)	5,000	1	5	417	* 12.81	** 5,342
HA–L83—Objection stating issues in notice are incorrect—sent 5 days prior to hearing; 404.939; 416.1439	45,000	1	5	3,750	* 12.81	** 48,038
HA–L2—Acknowledgement Letter	500,000	1	5	41,667	* 12.81	** 533,754
New notice and HA–55—404.936; 404.938; 416.1436; 416.1438	500,000	1	5	41,667	* 12.81	** 533,754
HA–L2—Verification of New Residence—404.936(c)(1); 416.1436(d)(1)	45,000	1	5	3,750	* 12.81	** 48,038
New Notice: Notification of objection to telephone, video teleconference, or online video more than 30-days after receipt of notice showing good cause; 404.936(c)(2); 416.1436(d)(2)	13,500	1	10	2,250	* 12.81	** 28,823
HA–510; HA–510–OP1—404.938(a); 416.1438(a)	4,000	1	2	133	** 12.81	** 1,704
Totals	2,912,500	....	....	993,634	....	** 12,728,453

* We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

SSA submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimates above; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

You can submit comments until July 18, 2023, which is 60 days after the publication of this document. However, your comments will be most useful if you send them to SSA by June 20, 2023, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Individuals with disabilities, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Social security, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary **Federal Register** Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III, parts 404, subpart J, and 416, subpart N, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.929, revise the fourth sentence to read as follows:

§ 404.929 Hearing before an administrative law judge-general.

* * * We will schedule you to appear by audio, video, or in person as set forth in § 404.936. * * *

■ 3. In § 404.936, revise paragraphs (b) through (d) to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

* * * * *

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The ''place'' of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by audio, video, or in person. A party to a hearing may only appear from the geographic areas, noted in this subsection, in which we hold hearings.

(c) *Determining manner of hearing to schedule.* We will schedule you or any other party to the hearing to appear by audio, video, or in person.

(1) When we determine your manner of appearance at the hearing, we consider the following factors:

(i) Which manner of appearance would be the most efficient for conducting the hearing; and

(ii) Any facts in your particular case that provide a good reason to schedule your appearance by audio, video, or in person.

(2) Subject to paragraph (c)(3) of this section, we will schedule you or any other party to the hearing to appear by audio when we cannot schedule you to appear by video and extraordinary circumstances prevent you from appearing in person.

(3) If you are incarcerated and a video appearance is not available, we will schedule you to appear by audio, unless we find that there are facts in your particular case that provide a good reason to schedule you to appear in person, if allowed by the place of confinement, or by video or in person upon your release.

(4) We will generally direct any person we call as a witness, other than you or any other party to the hearing, including a medical expert or a vocational expert, to appear by audio or by video. Witnesses you call will appear at the hearing pursuant to § 404.950(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by video or by audio. We will consider directing witnesses to appear in person only when:

(i) A witness is unable to appear by audio or video;

(ii) We determine that an audio or video appearance would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(5) We follow the procedures set forth in § 404.937 to ensure the safety of the public and our employees in our hearing process.

(d) *Objecting to appearing by audio, video, or both.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by audio or video. If you object to appearing by audio, video, or both, you must notify us in writing within 30 days after the date you receive the notice. If you only object to appearing by audio, we may schedule you to appear by video. Similarly, if you only object to appearing by video, we may schedule you to appear by audio. If you object to appearing by both audio and video, and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by audio, if you object to appearing by both audio and video and you change your residence while your request for hearing is pending, we may determine how you will appear, including by audio, as provided in paragraph (c) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(2) If you notify us that you object to appearing by audio, video, or both, more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 404.911. Examples of good cause include circumstances when you disagree with the terms of service for a third-party application or lack the resources to appear by video.

(3) Notwithstanding any objections you may have to appearing by audio, we will schedule you or any other party to the hearing to appear by audio in the circumstances provided in paragraphs (c)(2) and (3) of this section and in § 404.937(b)(2)(ii) and (c). For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

* * * * *

■ 4. In § 404.937, revise paragraphs (b)(2)(ii) and (c), and add paragraph (e) to read as follows:

§ 404.937 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b) * * *

(2) * * *

(ii) Require that the hearing be conducted by audio, notwithstanding any objection to appearing by audio.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by audio, notwithstanding any objection to appearing by audio.

* * * * *

(e) For audio appearances under this section, we will call you or any other party to the hearing using your or their telephone number(s).

* * * * *

■ 5. In § 404.944, revise the second sentence to read as follows:

§ 404.944 Administrative law judge hearing procedures-general.

* * * At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses, and, subject to the provisions of § 404.935, accepts as evidence any documents that are material to the issues; may stop the hearing temporarily and continue it at a later date if the administrative law judge finds that there is material evidence missing at the hearing or one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing; and may reopen the hearing at any time before the administrative law judge mails a notice of the decision in order to receive new and material evidence. * * *

■ 6. In § 404.976, revise paragraph (c) to read as follows:

§ 404.976 Procedures before the Appeals Council.

* * * * *

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance will be by audio, video, or in person, as set forth in § 404.936. The Appeals Council will determine whether any other person relevant to the proceeding will appear by audio, video, or in person as set forth in § 404.936(c)(4).

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 8. In § 416.1429, revise the fourth sentence to read as follows:

§ 416.1429 Hearing before an administrative law judge-general.

* * * We will schedule you to appear by audio, video, or in person as set forth in § 416.1436. * * *

■ 9. In § 416.1436, revise paragraphs (b) through (d) to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

* * * * *

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The ''place'' of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by audio, video, or in person. A party to a hearing may only appear from the geographic areas, noted in this subsection, in which we hold hearings.

(c) *Determining manner of hearing to schedule.* We will schedule you or any other party to the hearing to appear by audio, video, or in person.

(1) When we determine your manner of appearance at the hearing, we consider the following factors:

(i) Which manner of appearance would be the most efficient for conducting the hearing; and

(ii) Any facts in your particular case that provide a good reason to schedule your appearance by audio, video, or in person.

(2) Subject to paragraph (c)(3) of this section, we will schedule you or any other party to the hearing to appear by audio when we cannot schedule you to appear by video and extraordinary circumstances prevent you from appearing in person.

(3) If you are incarcerated and a video appearance is not available, we will schedule you to appear by audio, unless we find that there are facts in your particular case that provide a good reason to schedule you to appear in person, if allowed by the place of confinement, or by video or in person upon your release.

(4) We will generally direct any person we call as a witness, other than you or any other party to the hearing, including a medical expert or a vocational expert, to appear by audio or by video. Witnesses you call will appear at the hearing pursuant to § 416.1450(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by video or by audio. We will consider directing witnesses to appear in person only when:

(i) A witness is unable to appear by audio or video;

(ii) We determine that an audio or video appearance would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(5) We follow the procedures set forth in § 416.1437 to ensure the safety of the public and our employees in our hearing process.

(d) *Objecting to appearing by audio, video, or both.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by audio or video. If you object to appearing by audio, video, or both, you must notify us in writing within 30 days after the date you receive the notice. If you only object to appearing by audio, we may schedule you to appear by video. Similarly, if you only object to appearing by video, we may schedule you to appear by audio. If you object to appearing by both audio and video, and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by audio, if you object to appearing by both audio and video and you change your residence while your request for hearing is pending, we may determine how you will appear, including by audio, as provided in paragraph (c) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(2) If you notify us that you object to appearing by audio, video, or both, more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 416.1411. Examples of good cause include circumstances when you disagree with the terms of service for a third-party application or lack the resources to appear by video.

(3) Notwithstanding any objections you may have to appearing by audio, we will schedule you or any other party to the hearing to appear by audio in the circumstances provided in paragraphs (c)(2) and (3) of this section and in § 416.1437(b)(2)(ii) and (c). For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

* * * * *

■ 10. In § 416.1437, revise paragraphs (b)(2)(ii) and (c), and add paragraph (e) to read as follows:

§ 416.1437 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b) * * *

(2) * * *

(ii) Require that the hearing be conducted by audio, notwithstanding any objection to appearing by audio.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by audio, notwithstanding any objection to appearing by audio.

* * * * *

(e) For audio appearances under this section, we will call you or any other party to the hearing using your or their telephone number(s).

■ 11. In § 416.1444, revise the second sentence of to read as follows:

§ 416.1444 Administrative law judge hearing procedures-general.

* * * At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses, and, subject to the provisions of § 416.1435, accepts as evidence any documents that are material to the issues; may stop the hearing temporarily and continue it at a later date if the administrative law judge finds that there is material evidence missing at the hearing or one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing; and may reopen the hearing at any time before the administrative law judge mails a notice of the decision in order to receive new and material evidence. * * *

■ 12. In § 416.1476, revise paragraph (c) to read as follows:

§ 416.1476 Procedures before the Appeals Council.

* * * * *

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance will be by audio, video, or in person as set forth in § 416.1436. The Appeals Council will determine whether any other person relevant to the proceeding will appear by audio, video, or in person as set forth in § 416.1436(c)(4).

[FR Doc. 2023–10564 Filed 5–18–23; 8:45 am]

BILLING CODE 4191–02–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

RIN 3046–AB09

Procedures for Previously Exempt State and Local Government Employee Complaints of Employment Discrimination Under Section 304 of the Government Employee Rights Act of 1991

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is proposing to amend its existing regulations by which state and local government employees who were previously exempt from coverage under Title VII of the Civil Rights Act of 1964 may bring claims of employment discrimination pursuant to the Government Employee Rights Act of 1991. The EEOC proposes to amend the regulations to explicitly provide for digital transmission of documents, to update the regulation based upon the text of other regulations or statutes, and to make a number of editorial revisions to improve clarity and correct errors.

DATES: Comments on the notice of proposed rulemaking must be received on or before July 18, 2023.

ADDRESSES: You may submit comments, identified by RIN Number 3046–AB09, by any of the following methods—please use only one method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions on the website for submitting comments.

• *Fax:* Comments totaling six or fewer pages may be sent by fax machine to (202) 663–4114. Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921–2815 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

• *Mail:* Comments may be submitted by mail to Raymond Windmiller, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

• *Hand Delivery/Courier:* Raymond Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide.

Docket: For access to comments received, go to *https://www.regulations.gov.* Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m., from July 18, 2023 until the Commission publishes the rule in final form. You must make an appointment with library staff to review the comments in the Commission's library.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at (202) 921–2665 or *kathleen.oram@eeoc.gov,* or Erin Norris, Senior Attorney, Office of Legal Counsel, at (980) 296–1286 or *erin.norris@eeoc.gov.* Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: Title III of the Civil Rights Act of 1991, entitled the Government Employee Rights Act of 1991 (GERA), extends protections against employment discrimination based on race, color, religion, sex, national origin, age and disability to previously exempt state and local government employees. 42 U.S.C. 2000e–16c. In addition to providing these protections against discrimination, section 304 of GERA empowered the Equal Employment Opportunity Commission to address complaints filed by GERA-covered employees. GERA afforded previously exempt individuals new equal employment opportunity protections, and it introduced an administrative enforcement mechanism that was different from EEOC's pre-existing charge resolution procedures. Consequently, EEOC created procedures in 29 CFR part 1603 for handling complaints brought by individuals covered by GERA. The interim rule setting out these procedures was published at 62 FR 17542 (April 10, 1997) and the final rule was published at 64 FR 28743 (May 27, 1999). Pursuant to its authority under 42 U.S.C. 2000e–12 to ''amend . . . suitable procedural regulations to carry out the provisions of this subchapter,'' the EEOC now proposes to revise those regulations as described in this document.

Digital Submission of Documents

Proposed revisions to §§ 1603.102, 106, 208, 209, and 302 update the regulations to allow for digital submission of documents. Since last revising this regulation, the EEOC has expanded its use of technology in charge and complaint processing. The Commission has implemented a digital system for charges and complaints of discrimination filed with the EEOC. The system enables the EEOC, charging parties and complainants, and respondents against whom charges or complaints are filed to communicate and transmit documents digitally through a secure online portal. It allows potential charging parties and complainants to submit online inquiries to the EEOC and to schedule intake interviews through the online system. In addition, in some cases the EEOC allows parties to submit information to agency personnel through email. While parties may continue to submit information using other methods, digital submission of documents through the online system is the preferred method.

Other Regulations and Statutes

The proposed revisions also include a few changes to citations to other regulations or statutes, as well as cross-references to sections within part 1603. In § 1603.108, an incorrect statutory citation was corrected, and in §§ 1603.102, 107, 301, and 303, references to other EEOC regulations and cross-references to sections in part 1603 were added, updated, or corrected.

Further, in § 1603.107 the EEOC proposes to remove two paragraphs that are substantively analogous to paragraphs removed in 2008 from the agency's procedural charge processing regulations in 29 CFR 1601.18. This proposed removal of the language from part 1603 would standardize the EEOC's various procedural regulations. The paragraphs in question state that the Commission may dismiss a GERA complaint if the complainant cannot be located or if the complainant fails to provide information, appear for interviews, or otherwise cooperate with the agency. When similar language was removed from part 1601 in 2008, the agency noted that removing the language would bring part 1601 in line with the agency's procedural regulations governing the Age Discrimination in Employment Act and the Equal Pay Act, which do not contain the dismissal bases of failure to cooperate or failure to locate. Additionally, the agency noted in 2008 that the language had resulted in dismissals of private lawsuits when courts determined that the plaintiffs had not satisfied all prerequisites for filing suit; some courts held that having one's charge dismissed for failure to cooperate with the EEOC's investigation equated to failure to exhaust one's administrative remedies. The Commission did not intend to cause Federal court dismissals or to impose on charging parties any additional prerequisites to suit. For these reasons, the EEOC now proposes to remove the paragraphs addressing failure to locate a complainant and failure of a complainant to cooperate with the EEOC from § 1603.107. This proposed revision is not intended to limit the Commission's discretion to dismiss complaints on these or other grounds where appropriate.

Finally, the EEOC proposes to revise § 1603.215(a) to reflect that transcripts of hearings before administrative law judges are available to the parties. The regulations now incorrectly state that the transcripts are available to the public as well; however, this statement conflicts with section 556 of the Administrative Procedure Act (APA), which states that a transcript shall be made available "to the parties." [1] The revision corrects this error and ensures that GERA complaints are processed in accordance with APA procedures, as GERA requires.

Other Clarifying Changes

The EEOC proposes to revise § 1603.207(c) to change the time for response to a motion to intervene from 15 days to 10 business days. Other responses to motions filed pursuant to part 1603 must be filed within 10 business days of service of the motion; this change is meant to standardize the deadline within part 1603. The EEOC also proposes to revise § 1603.302 by adding a paragraph requiring service on the opposing party of appeals taken under part 1603. Additionally, a number of minor grammatical, punctuation, and other editorial changes were made throughout this part.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a "significant regulatory action" under section 3(f) of the order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

[1] 5 U.S.C. 556(e).

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This proposed rule contains no new information collection requirements for the public, and therefore it will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it does not affect any small business entities. The regulation affects only certain employees of state or local governments. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. To the extent that it affects small governments by allowing for digital transmission of documents, it will save resources of those entities. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This proposed rule is not a "rule" under the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996) because the Congressional Review Act only applies to final rules. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1603

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations, Investigations, State and local governments.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission proposes to amend 29 CFR part 1603 as follows:

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 304 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

■ 1. The authority citation for part 1603 is revised to read as follows:

Authority: 42 U.S.C. 2000e–12 and –16c; 42 U.S.C. 2000ff–6(b).

■ 2. Amend § 1603.102:

■ a. By revising paragraphs (a), (b), the introductory text of paragraph (c), (c)(1), (c)(2), (c)(4), and the last sentence of paragraph (d); and

■ b. In paragraph (e), in the first sentence, by removing the commas.

The revisions read as follows:

§ 1603.102 Filing a complaint.

(a) *Who may make a complaint.* Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information, or retaliated against for opposing any practice made unlawful by federal laws protecting equal employment opportunity or for participating in any stage of administrative or judicial proceedings under those federal laws, may file a complaint not later than 180 days after the occurrence of the alleged discrimination or retaliation.

(b) *Where to file a complaint.* A complaint may be filed using the Commission's designated digital systems, in person, by facsimile, or by mail to any Commission office or with any designated agent or representative of the Commission. The addresses of the Commission's offices may be found at *www.eeoc.gov.*

(c) *Contents of a complaint.* A complaint shall be in writing and signed and shall be verified as defined in § 1601.3(a). In addition, each complaint should contain the following:

(1) The full name and contact information of the person making the complaint;

(2) The full name and contact information of the person, governmental entity, or political subdivision against whom the complaint is made, if known (hereinafter referred to as the respondent);

* * * * *

(4) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local Fair Employment Practices (FEP) agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(d) * * * A complaint that has been amended after it was referred (see § 1603.103) shall not be again referred to the appropriate State or local FEP agency.

* * * * *

§ 1603.103 [Amended]

■ 3. Amend § 1603.103(b) by removing the comma.

■ 4. Revise § 1603.106 to read as follows:

§ 1603.106 Computation of time generally and for timely receipt by the Commission.

(a)(1) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(2) The first day counted shall be the day after the event from which the time period begins to run, and the last day of the period shall be included unless it falls on a Saturday, Sunday, or federal holiday, in which case the period shall be extended to include the next business day.

(3) All time limits in this part are subject to waiver, estoppel, and equitable tolling.

(b) Documents submitted to the Commission are deemed timely received as follows:

(1) A document submitted by digital transmission, by facsimile not exceeding 20 pages, or by personal delivery or commercial delivery service shall be deemed timely if it is received before the expiration of the applicable filing period. A document submitted by digital means shall be deemed received on the date the EEOC's designated digital system records the upload.

(2) A document submitted by mail shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period or, in the absence of a legible postmark, if it is received within 5 days of the expiration of the applicable filing period.

(c) For the purposes of this part, the terms *file, serve, receive, issue, transmit, send,* and any other word forms of these terms, such as *filing* or *serving,* when used to describe transmission of documents, shall include all forms of digital transmission.

■ 5. Amend § 1603.107:

■ a. By revising paragraph (a);

■ b. By removing paragraphs (b) and (c); and

■ c. By redesignating paragraphs (d) and (e) as paragraphs (b) and (c) and revising newly redesignated paragraphs (b) and (c).

The revisions read as follows:

§ 1603.107 Dismissals of complaints.

(a) Where a complaint is not timely filed or, except as described in § 1603.102(e), fails to state a claim under this part, the Commission shall dismiss the complaint.

(b) Written notice of dismissal pursuant to paragraph (a) of this section shall be issued to the complainant and the respondent. The Commission hereby delegates authority to dismiss complaints to the Director, Office of Field Programs or the Director's designees, and to District Directors or their designees.

(c) A complainant who is dissatisfied with a dismissal issued pursuant to this section may appeal to the Commission in accordance with the procedures in subpart C of this part.

§ 1603.108 [Amended]

■ 6. Amend § 1603.108:

■ a. In paragraph (c), by adding a comma after the words ''employees of the Commission''; and

■ b. In paragraph (d), by removing the number ''584'' and adding in its place the number ''574''.

§ 1603.109 [Amended]

■ 7. Amend § 1603.109:

■ a. In paragraph (a), by adding the word ''an'' before the word ''investigation'' and by adding a comma after the word ''visits''; and

■ b. In paragraph (b), in the first sentence, by adding a comma after the words ''the production of evidence''.

§ 1603.201 [Amended]

■ 8. Amend § 1603.201:

■ a. In paragraph (a), by adding a comma after the words ''of this section or'';

■ b. In paragraph (c), by removing the words ''representatives or witnesses'' and adding in their place the words ''representatives, and their witnesses''.

■ 9. Amend § 1603.202:

■ a. In paragraph (a), by adding a comma after the word ''place''; and

■ b. By revising paragraph (b) to read as follows:

§ 1603.202 Administrative law judge.

* * * * *

(b) Enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge either prior to the hearing or within 2 days after the scheduled hearing and presenting arguments as to why the party or the party's representative could not appear; and

* * * * *

■ 10. Amend § 1603.203:

■ a. By revising paragraphs (a) and (b); and

■ b. By removing paragraph (c).

The revisions read as follows:

§ 1603.203 Unavailability or withdrawal of administrative law judges.

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hearing or issuing a decision on the record as made, or both. At any time administrative law judges deem themselves disqualified, they may withdraw from an adjudication.

(b) Prior to issuance of a decision on the complaint, any party may move that the administrative law judge withdraw on the grounds of personal bias or other disqualification by filing with the administrative law judge an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal promptly upon discovery of the alleged facts. The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion was filed promptly and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

■ 11. Amend § 1603.204:

■ a. By revising the last sentence of paragraph (a); and

■ b. By revising paragraphs (b) and (d).

The revisions read as follows:

§ 1603.204 Ex parte communications.

(a) * * * Communications between the administrative law judge or Commission personnel and one party concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission, and other purely procedural questions are permitted.

(b) ''Decision-making personnel of the Commission'' includes members of the Commission and their staffs as well as personnel in the Office of Federal Operations but does not include investigators and intake staff.

* * * * *

(d) Where it appears that a party has engaged in prohibited ex parte communications, that party may be required to show cause why, in the interest of justice, the party's claim or defense should not be dismissed, denied, or otherwise adversely affected.

§ 1603.205 [Amended]

■ 12. Amend § 1603.205(b) by removing the comma after the words ''in the adjudication''.

§ 1603.206 [Amended]

■ 13. Amend § 1603.206:

■ a. In paragraph (a), in the first sentence, by removing the words ''his or her'' and adding in their place the words ''the administrative law judge's'', by removing the comma after the words ''common parties'', and by adding the word ''common'' before the word ''factual''; and

■ b. In paragraph (b), by removing the words ''his or her'' and adding in their place the words ''the administrative law judge's'' and by adding a comma after the word ''claims''.

§ 1603.207 [Amended]

■ 14. Amend § 1603.207:

■ a. In paragraph (b), by adding the word ''relevant'' before the words ''facts or reasons''; and

■ b. In paragraph (c), by removing the words ''15 days after the filing'' and adding in their place the words ''10 business days after service''.

§ 1603.208 [Amended]

■ 15. Amend § 1603.208:

■ a. In paragraph (b), in the first sentence, by removing the words ''ten (10)'' and adding in their place the number ''10'', and in the last sentence, by removing the words ''judge, in his or her discretion, orders'' and adding in their place the words ''judge exercises discretion to order'';

■ b. In paragraph (c), in the third sentence, by adding the words ''or other digital means'' after the word ''telephone'', and in the last sentence, by removing the words ''five (5)'' and adding in their place the number ''5'', and by adding a comma after the word ''vacate''; and

■ c. In paragraph (d), by removing the words ''dilatory, repetitive or frivolous motions'' and adding in their place the words ''motions that are repetitive, frivolous, or intended to delay the proceedings''.

■ 16. Revise § 1603.209 to read as follows:

§ 1603.209 Filing and service.

(a) Unless otherwise ordered by the administrative law judge, a signed original of each motion, brief, or other document shall be filed with the administrative law judge, with a certificate of service indicating that a copy has been sent to all other parties and stating the date and manner of service. Digitally submitted documents may be electronically signed. All documents presented in hard copy shall be on standard size (8½ × 11) paper. Each document filed shall be clear and legible.

(b) Filing and service shall be made by first class mail or other more expeditious means of delivery, including, at the discretion of the administrative law judge, by facsimile, digital transmission, or other means. The administrative law judge may exercise discretion to limit the number of pages that may be filed or served by facsimile. Service shall be made on a party's representative, or, if not represented, on the party.

(c) Every document shall contain a caption including the parties' names, the complaint number or docket number assigned to the matter, a designation of the type of filing (*e.g.,* motion, brief, etc.), and the filing person's signature and contact information.

§ 1603.210 [Amended]

■ 17. Amend § 1603.210(b) by adding a comma after the word ''admission''.

§ 1603.211 [Amended]

■ 18. Amend § 1603.211:

■ a. In paragraph (a), in the last sentence, by adding the word ''state'' before the words ''the date and time''; and

■ b. In paragraph (b), in the second sentence, by adding the word ''also'' before the words ''be served upon''.

§ 1603.213 [Amended]

■ 19. Amend § 1603.213:

■ a. In paragraph (a) introductory text, by adding the words ''either independently or'' before the words ''upon motion of a party'', and by removing the words ''or upon his or her own motion'';

■ b. In paragraph (a)(2), by removing the word ''ruling'' and adding in its place the word ''appeal'', and by removing the word ''or'' and adding in its place the word ''and'';

■ c. In paragraph (a)(3), by removing the word ''ruling'' and adding in its place the word ''appeal'';

■ d. In paragraph (b) introductory text, by removing the words ''ten (10)'' and adding in their place the number ''10''; and

■ e. In paragraph (c), in the last sentence, by removing the comma after the word ''judge'' and by removing the words ''within his or her discretion,''.

§ 1603.214 [Amended]

■ 20. Amend § 1603.214 by adding the word ''that'' before the words ''the rules on hearsay''.

§ 1603.215 [Amended]

■ 21. Amend § 1603.215:

■ a. In paragraph (a), in the first sentence, by removing the words ''mechanically or stenographically reported'' and adding in their place the words ''audio or video recorded, stenographically reported, or both'' and in the last sentence, by removing the words ''and the public''; and

■ b. In paragraph (b), by removing a comma after the words ''upon motion'' and by removing the words ''ten (10)'' and adding in their place the number ''10''.

§ 1603.217 [Amended]

■ 22. Amend § 1603.217(b), in the last sentence, by adding a semicolon after the word ''discovery''.

§ 1603.301 [Amended]

■ 23. Amend § 1603.301 by removing the citation ''§ 1613.213'' and adding in its place the citation ''§ 1603.213''.

■ 24. Amend § 1603.302:

■ a. By revising paragraph (b); and

■ b. By adding a new paragraph (c).

The revisions read as follows:

§ 1603.302 Filing an appeal.

* * * * *

(b) An appeal shall be filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, by mail to P.O. Box 77960, Washington, DC 20013, by personal delivery or commercial delivery service, by digital transmission, or by facsimile to 202–663–7022.

(c) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

§ 1603.303 [Amended]

■ 25. Amend § 1603.303:

■ a. In paragraph (c), introductory text, by adding a comma after the word ''order'';

■ b. In paragraph (c)(2), by adding a comma after the word ''regulation''; and

■ c. In paragraph (e), by removing the words ''the appeal and'' and by removing the citation ''§ 1603.209'' and adding in its place the citation ''§ 1603.302(b) and (c)''.

§ 1603.306 [Amended]

■ 26. Amend § 1603.306 by removing a comma after the word ''resides''.

Dated: May 12, 2023.

For the Commission,

Charlotte A. Burrows,

Chair.

[FR Doc. 2023–10575 Filed 5–18–23; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[SATS No. AK–009–FOR; Docket ID: OSM–2022–0007; S1D1S S08011000SX064A000 222S180110; S2D2S SS08011000 SX064A000 22XS501520]

Alaska Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the Alaska program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This amendment proposes to change the Alaska Administrative Code by revising and adding provisions pertaining to Valid Existing Rights. Alaska intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency. This document gives the times and locations that the Alaska program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., MDT June 20, 2023. If requested, we may hold a public hearing or meeting on the amendment on June 13, 2023. We will accept requests to speak at a hearing until 4 p.m., MDT on June 5, 2023.

ADDRESSES: You may submit comments, identified by SATS No. AK–009–FOR, by any of the following methods:

Mail/Hand Delivery: OSMRE, Attn: Howard Strand, Denver Field Branch Manager; Office of Surface Mining Reclamation and Enforcement; One Denver Federal Center, Building 41, P.O. Box 25065, Lakewood, Colorado 80225–0065.

Fax: 303–236–6056.

Federal eRulemaking Portal: The amendment has been assigned Docket ID: OSM–2022–0007. If you would like to submit comments go to *https://www.regulations.gov*. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Alaska program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Denver Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Attn: Howard Strand, Denver Field Branch Manager, Office of Surface Mining Reclamation and Enforcement, One Denver Federal Center—Building 41, Lakewood, Colorado 80225–0065, Telephone: (303) 236–2931, Email: *hstrand@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Russell Kirkham, Alaska Coal Regulatory Program Manager, Division of Mining, Land and Water, Department of Natural Resources, 550 West 7th Avenue, Suite 900D, Anchorage, Alaska 99501–3577, Telephone: (907) 269–8650, Email: *russell.kirkham@alaska.gov*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, P.O. Box 11018, 100 East B Street, Casper, Wyoming 82601–1018. Telephone: (307) 261–6550. Email: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

Background on the Alaska Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Alaska program on May 2, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program in the March 23, 1983, **Federal Register** (48 FR 12274). You can also find later actions concerning the program and program amendments at 30 CFR 902.10.

Description of the Proposed Amendment

By letter dated June 27, 2022 (Administrative Record No. OSM–2022–0019–001), Alaska sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). OSMRE received the amendment on June 28, 2022 and found it administratively complete on June 29, 2022.

Alaska submitted the amendment to implement the required changes identified in OSMRE's April 2, 2001 and February 4, 2008 letters and conform with the State of Alaska ''Drafting Manual for Administrative Regulation.'' The amendment proposes to change the Alaska Administrative Code by revising and adding provisions pertaining to Valid Existing Rights. Specifically, Alaska proposes to add a definition of ''valid existing rights,'' changes to areas where mining may be limited or occurs in an area designated unsuitable for surface coal mining, and to formalize the process to request valid existing rights. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., MDT on June 5, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 902

State regulatory program approval, State-federal cooperative agreement, required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7–11.

[FR Doc. 2023–10491 Filed 5–18–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[SATS No. AK–008–FOR; Docket ID: OSM–2022–0006; S1D1S SS08011000 SX64A000 222S180110; S2D2S SS08011000 SX64A000 22XS501520]

Alaska Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the Alaska program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This amendment proposes to change the Alaska Administrative Code by revising and adding provisions pertaining to Ownership and Control. Alaska intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Alaska program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., MDT, June 20, 2023. If requested, we may hold a public hearing or meeting on the amendment on June 13, 2023. We will accept requests to speak at a hearing until 4 p.m., MDT, on June 5, 2023.

ADDRESSES: You may submit comments, identified by SATS No. AK–008–FOR, by any of the following methods:

Mail/Hand Delivery: OSMRE, Attn: Howard Strand, Denver Field Branch Manager; Office of Surface Mining Reclamation and Enforcement; One Denver Federal Center, Building 41, P.O. Box 25065, Lakewood, Colorado 80225–0065.

Fax: (303) 236–6056.

Federal eRulemaking Portal: The amendment has been assigned Docket ID: OSM–2022–0006. If you would like to submit comments go to *https://www.regulations.gov*. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Alaska program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Denver Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Attn: Howard Strand, Denver Field Branch Manager, Office of Surface Mining Reclamation and Enforcement, One Denver Federal Center—Building 41, Lakewood, Colorado 80225–0065, Telephone: (303) 236–2931, Email: *hstrand@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Russell Kirkham, Alaska Coal Regulatory Program Manager, Division of Mining, Land and Water,, Department of Natural Resources,, 550 West 7th Avenue, Suite 900D, Anchorage, Alaska 99501–3577, Telephone: (907) 269–8650, Email: *russell.kirkham@alaska.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, P.O. Box 11018, 100 East B Street Casper, Wyoming 82601–1018. Telephone: (307) 261–6550. Email: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

Background on the Alaska Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Alaska program on May 2, 1983. You can find background information on the Alaska program and/or plan, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program in the March 23, 1983, **Federal Register** (48 FR 12274). You can also find later actions concerning the program and program amendments at 30 CFR 902.10.

Description of the Proposed Amendment

By letter dated June 27, 2022 (Administrative Record No. OSM–2022–0018–001), Alaska sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). OSMRE received the amendment on June 28, 2022 and found it administratively complete on June 29, 2022. Alaska submitted the amendment to implement the required changes identified in OSMRE's October 2, 2009 letter under the authority of 30 CFR part 732.17(c), and to conform with the State of Alaska's ''Drafting Manual for Administrative Regulation.'' The amendment proposes to change the Alaska Administrative Code by revising and adding provisions pertaining to ownership and control. Specifically, Alaska proposes to add definitions, requirements for permits, general reclamation requirements, and permit processing, along with revisions to permit application requirements, permit rights, federal enforcement, civil penalties, individual civil penalties, and alternative enforcement. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., MDT on June 5, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 902

State regulatory program approval, State-federal cooperative agreement, Required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7–11.

[FR Doc. 2023–10498 Filed 5–18–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–041–FOR; Docket ID: OSM–2023–0002; S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). During the 2021 legislative session, Montana updated its Montana Strip and Underground Mine Reclamation Act and Montana Code Annotated. Accordingly, Montana submitted this proposed amendment to OSMRE on its own initiative. The proposed amendment defines the term affected drainage basin and changed bond release requirements to incorporate affected drainage basins into bond release applications. Montana also proposes recodifications resulting from incorporating the proposed changes into the Montana Code Annotated. This document gives the times and locations that the Montana program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Mountain Daylight Time (MDT), June 20, 2023. If requested, we may hold a public hearing or meeting on the amendment on June 13, 2023. We will accept requests to speak at a hearing until 4 p.m., MDT on June 5, 2023.

ADDRESSES: You may submit comments, identified by SATS No. MT–041–FOR, by any of the following methods:

Mail/Hand Delivery: OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82602.

Fax: (307) 261–6552

Federal eRulemaking Portal: The amendment has been assigned Docket

ID: OSM–2023–0002. If you would like to submit comments, go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Area Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Attn: Jeffrey Fleischman, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550, Email: *jfleischman@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Dan Walsh, Chief, Coal and Opencut Mining Bureau, Coal Section, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59601–0901, Telephone: (406) 444–6791, Email: *dwalsh@mt.gov*.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Fleischman, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, POB 11018, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550, Email: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Subject to OSMRE's oversight, Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated February 16, 2023 (FDMS Document ID No. OSM–2023–0002–0001), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana's proposed amendment to be administratively complete on February 17, 2023. Montana submitted the proposed amendment to us, on its own initiative, following changes to its statutes in 2021. During the 2021 legislative session, the Montana legislature passed Senate Bill 201 (SB 328) (FDMS Document ID No. OSM–2023–0002–0002). SB 328 updated the Montana Strip and Underground Mine Reclamation Act and the Montana Code Annotated (MCA), at sections 82–4–203 and 82–4–232.

Montana first proposes to add language, at MCA 82–4–203(3), defining the term affected drainage basin. Second, the amendment proposes to incorporate the term affected drainage basin into the bond release requirements found at MCA 82–4–232. Minor wording changes are also proposed to the bond release requirements found in the MCA, at 82–4–232. Lastly, Montana proposes recodifications to the MCA at 82–2–203 and 82–4–232 resulting from the changes proposed above. The full text of the program and/or plan amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., MDT on June 5, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

State regulatory program approval, State-federal cooperative agreement, Required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7–11.

[FR Doc. 2023–10495 Filed 5–18–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–057–FOR; Docket ID: OSM–2022–0011; S1D1S SS08011000 SX064A000 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule/Opening; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes changes to the North Dakota Century Code and North Dakota Administrative Code resulting from actions initiated during both the 2017 and 2021 Legislative Sessions. Changes include altering the time required for scheduling and applying for select permit related actions, creation of the North Dakota Department of Environmental Quality and a transfer of select responsibilities from the Department of Health, establishment of the Department of Water Resources, and the powers and duties of that agency and the state engineer. This document gives the times and locations that the North Dakota program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Mountain Daylight Time (MDT), June 20, 2023. If requested, we may hold a public hearing or meeting on the amendment on June 13, 2023. We will accept requests to speak at a hearing until 4 p.m., MDT on June 5, 2023.

ADDRESSES: You may submit comments, identified by SATS No. ND–057–FOR, by any of the following methods:

Mail/Hand Delivery: OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82601–1018.

Fax: (307) 261–6552.

Federal eRulemaking Portal: The amendment has been assigned Docket ID: OSM–2022–0011. If you would like to submit comments go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Area Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Attn: Jeffrey Fleischman, Denver Field Division Chief, Office of Surface Mining Reclamation and Enforcement, Casper Area Office, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82601–1018. Telephone: (307) 261–6555, Email: *jfleischman@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Zanna Brinkman, Reclamation Division Director, North Dakota Public Service Commission, 600 East Boulevard, Dept. 408, Bismarck, North Dakota 58505–0480. Telephone: (701) 328–2400, Email: *zbrinkman@nd.gov*.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Fleischman, Denver Field Division Chief, Office of Surface Mining Reclamation and Enforcement, Casper Area Office, P.O. Box 11018, 100 East B Street Casper, Wyoming 82601–1018. Telephone: (307) 261–6555, Email: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning the North Dakota program and program amendments at 30 CFR 934.15 and 934.30.

Description of the Proposed Amendment

By letter dated November 30, 2022 (Administrative Record No. ND–SS–01), North Dakota sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment at its own initiative to include changes made to both the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC). House Bill No. 1061, from the 2021 Legislative Session, increased the time for scheduling an informal conference on a permit, significant permit revision, or permit renewal application from 30 days to 45 days. It also changes the time a mining company is required to apply for a permit renewal from 120 days to 180 days prior to permit expiration. Senate Bill No. 2327, from the 2017 Legislative Session, created the North Dakota Department of Environmental Quality and transferred duties from the North Dakota Department of Health related to environmental quality. House Bill No. 1353, from the 2021 Legislative Session, established the North Dakota Department of Water Resources and identifies the powers and responsibilities of the agency and the state engineer. North Dakota law and rules must be updated to reflect these changes. The full text of the program amendment is available for you to read at the locations listed above under ADDRESSES or at *www.regulations.gov*.

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see DATES) or sent to an address other than those listed (see ADDRESSES) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4 p.m., MDT on June 5, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 934

Surface mining, Underground mining.

David Berry,

Regional Director, Unified Interior Regions 5, 7–11.

[FR Doc. 2023–10493 Filed 5–18–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–056–FOR; Docket ID: OSM–2022–0010; S1D1S SS08011000 SX064A000 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule/opening of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes changes to the North Dakota Century Code made by the 67th Legislative Assembly in response to Senate Bill 2317, introduced by the Department of Trust Lands, and the resulting rule changes to the North Dakota Administrative Code for surface coal mining and reclamation operations. The changes add a perfected lien or security interest in real property to the definition of collateral bond and add the conditions that must be met for real property pledged as collateral bond. This document gives the times and locations that the North Dakota program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Mountain Daylight Time (MDT), June 20, 2023. If requested, we may hold a public hearing or meeting on the amendment on June 13, 2023. We will accept requests to speak at a hearing until 4 p.m., MDT on June 5, 2023.

ADDRESSES: You may submit comments, identified by SATS No. ND–056–FOR, by any of the following methods:

Mail/Hand Delivery: OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82601–1018.

Fax: (307) 261–6552.

Federal eRulemaking Portal: The amendment has been assigned Docket ID: OSM–2022–0010. If you would like to submit comments, go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Area Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Attn: Jeffrey Fleischman, Denver Field Division Chief, Office of Surface Mining Reclamation and Enforcement, Casper Area Office, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82601–1018, Telephone: (307) 261–6555, email: *jfleischman@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Zanna Brinkman, Reclamation Division Director, North Dakota Public Service Commission, 600 East Boulevard, Dept. 408, Bismarck, North Dakota 58505–0480, Telephone: (701) 328–2400, email: *zbrinkman@nd.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Denver Field Division Chief, Office of Surface Mining Reclamation and Enforcement, Casper Area Office, P.O. Box 11018, 100 East B Street, Casper, Wyoming 82601–1018, Telephone: (307) 261–6555, email: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning the North Dakota program and program amendments at 30 CFR 934.15 and 934.30.

Description of the Proposed Amendment

By letter dated December 9, 2022 (Administrative Record No. ND–RR–01), North Dakota sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment at its own initiative to include changes made to both the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC). Changes to the NDCC were made by the 67th Legislative Assembly in response to Senate Bill No. 2317, which was introduced by the Department of Trust Lands. Senate Bill No. 2317 created and enacted Chapter 15–72 of the NDCC, which establishes a coal mine reclamation trust, which utilizes private assets pledged as collateral to fulfill performance bond obligations. A perfected lien or security interest in real property has been added to the definition of collateral bond in NDAC 69–05.2–01–02 and the conditions required for real property to be pledged as collateral bond have been added to NDAC 69–05.2–12–04. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., MDT on June 15, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 934

Surface Mining, Underground Mining.

David Berry,

Regional Director, Unified Interior Regions 5, 7–11.

[FR Doc. 2023–10497 Filed 5–18–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD35

Land Uses; Special Uses; Cost Recovery, Strict Liability Limit, and Insurance

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, published a proposed rule in the **Federal Register** on March 9, 2023, initiating a 60-day comment period on the proposed rule to amend its special use regulations to update the processing and monitoring fee schedules based on current Agency costs; to provide for recovery of costs associated with processing special use proposals, as well as applications; and to remove the exemption for commercial recreation special use applications and authorizations that involve 50 hours or less to process or monitor. In addition, the Forest Service is proposing to amend its special use regulations to increase the strict liability limit consistent with the strict liability limit established by the United States Department of the Interior, Bureau of Land Management, and to expressly provide for requiring holders of a special use authorization to obtain insurance, as needed. The comment period for the original document closed May 8, 2023. The Agency is reopening the comment period for an additional 30 days from the date of publication of this document.

DATES: The comment period for the proposed rule published at 88 FR 14517 on March 9, 2023, is reopened. Comments must be received in writing by June 20, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD35, should be sent via one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for sending comments;

2. *Email: SM.FS.WO_LandStaff@usda.gov;*

3. *Mail:* Director, Lands, Minerals, and Geology Staff, 201 14th Street SW, Washington, DC 20250–1124; or

4. *Hand Delivery/Courier:* Director, Lands, Minerals, and Geology Staff, 1st Floor Southeast, 201 14th Street SW, Washington, DC 20250–1124.

Comments should be confined to issues pertinent to the proposed rule, should explain the reasons for any recommended changes, and should reference the specific section and wording being addressed, where possible. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule at the Office of the Director, Lands, Minerals, and Geology Staff, 201 14th Street SW, 1st Floor Southeast, Sidney R. Yates Federal Building, Washington, DC 20024, on business days between 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead at 202–205–1680 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Elrand Denson, Assistant Director, Washington Office Lands, Minerals, and Geology Staff, 202–644–5974 or *elrand.denson@usda.gov*. Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service at 800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Forest Service is proposing to amend its special use regulations to update the processing and monitoring fee schedules based on current Agency costs; to provide for recovery of costs associated with processing special use proposals, as well as applications; and to remove the exemption for commercial recreation special use applications and authorizations that involve 50 hours or less to process or monitor. In addition, the Forest Service is proposing to amend its special use regulations to increase the strict liability limit consistent with the strict liability limit established by the United States Department of the Interior, Bureau of Land Management, and to expressly provide for requiring holders of a special use authorization to obtain insurance, as needed.

To provide further opportunity for the public to comment, the Agency is reopening the comment period on the proposed rule for an additional 30 days.

The proposed rule can be found at *www.federalregister.gov/documents/2023/03/09/2023-04180/land-uses-special-uses-cost-recovery-strict-liability-limit-and-insurance*.

After the comment period closes, the Forest Service will consider timely and relevant comments in the development of the final rule.

Dated: May 11, 2023.

Andrea Delgado,

Chief of Staff, Natural Resources and Environment.

[FR Doc. 2023–10436 Filed 5–18–23; 8:45 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2022–0459; FRL–10785–01–R2]

Approval of Air Quality Implementation Plans; New Jersey; New Jersey 2017 Periodic Emission Inventory SIP for Ozone Nonattainment and $PM_{2.5}$/ Regional Haze Areas, New Jersey Nonattainment Emission Inventory for 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions related to the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The SIP revision consists of the following: 2017 calendar year ozone precursor emission inventories for volatile organic compounds (VOC), oxides of nitrogen (NO_X) and carbon monoxide (CO) for the Northern New Jersey portion of the New York-Northern New Jersey-Long Island NY-NJ-CT ozone nonattainment area (Northern New Jersey) and the Southern New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE ozone nonattainment area (Southern New Jersey).

DATES: Written comments must be received on or before June 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2022–0459 at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–3382, or by email at *banon.ysabel@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP revision also consists of the 2017 calendar year statewide periodic emissions inventory for New Jersey. The pollutants included in this inventory include VOC, NO_X, CO, particulate matter with an aerodynamic diameter less than or equal to 2.5 microns ($PM_{2.5}$), particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}), ammonia (NH_3) and sulfur dioxide (SO_2). Emission inventories are needed to develop and assess new control strategies that the states may use in attainment demonstration SIPs associated with the NAAQS for ozone, CO and $PM_{2.5}$ and for regional haze planning SIPs.

In addition, EPA is proposing to approve the demonstration portion of the comprehensive SIP revision submitted by New Jersey that certifies that the State has satisfied the requirements for a nonattainment emission inventory for a Serious classification of the 2008 NAAQS.

I. Background

Ozone is a gas that is formed by the reaction of VOC and NO_X in the atmosphere in the presence of sunlight. Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_X referred to as ozone precursors. These precursors (VOC and NO_X) are emitted by many types of pollution sources, including point sources such as power plants and industrial emissions sources; on-road and off-road mobile sources (motor vehicles and engines); and smaller residential and commercial sources, such as dry cleaners, auto body shops, and household paints, collectively referred to as nonpoint sources (also called area sources).

The Clean Air Act (CAA or the Act) requires that areas designated as nonattainment for ozone and classified as moderate or worse demonstrate Reasonable Further Progress (RFP) by reducing emissions of ozone precursors (NO_X and VOCs).[1]

On March 12, 2008, the EPA revised both the primary and secondary NAAQS[2] for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment. (*See* 73 FR 16436, March 27, 2008). The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set on 1997, but is set at a more protective level. Under the EPA's regulations, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15.[3]

Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data. (*See* 77 FR 30088, May 21, 2012). With that rulemaking, Northern New Jersey and Southern New Jersey areas were designated as marginal ozone nonattainment areas. Areas that were designated as marginal nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data.

The counties in Northern New Jersey consist of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren. The counties in Southern New Jersey consist of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem.

On May 4, 2016, the EPA published its determination that Northern New Jersey had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline and the area was reclassified to moderate ozone nonattainment area. *See* 40 CFR 81.306. (*See* 81 FR 26697). Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than six years after the effective date of designations, or July 20, 2018, based on 2015–2017 monitoring data *See* 40 CFR 51.903.

Effective September 23, 2019, the EPA published its determination that Northern New Jersey had failed to attain 2008 8-hour ozone NAAQS by the attainment deadline based on the monitoring data (2015–17), and the area was reclassified as serious nonattainment area. (*See* 84 FR 44238, August 23, 2019). Areas that were designated as serious nonattainment were required to attain the 2008 ozone NAAQS no later than July 20, 2021, based on 2018–2020 monitoring data. (*See id.*)

Effective November 7, 2022, the EPA published its determination that Northern New Jersey had failed to attain 2008 8-hour ozone NAAQS by the attainment deadline based on the most recent years (2018–2020). (*See* 87 FR 60926, October 7, 2022). Areas that were reclassified as severe nonattainment were required to attain the 2008 8-hour ozone NAAQS must attain the standard ''as expeditious as practicable'' but no later than July 20, 2027, based on 2024–2026 monitoring data. (*See id.*)

A. Statutory and Regulatory Requirements for Emission Inventories

Section 182(a)(3)(B) of the Act requires states with ozone nonattainment areas to submit revisions to their SIP to require the owner or operator of each major stationary source of NO_X or VOC to provide the state with annual statements documenting the actual emissions of NO_X and VOC from their sources. For nonattainment areas, air agencies must develop, and include in their SIPs, emission reporting programs for certain VOC and NO_X sources. CAA section 110, in conjunction with 40 CFR 51.102, 51.103 and Appendix V, establishes the procedure for submitting a SIP revision. In addition, 40 CFR 51.308(d)(4)(v) of EPA's Regional Haze Rule (RHR) requires the establishment of a statewide emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area.

Sections 172(c)(3) and 182(a)(1) of the Act require states to develop and submit, as a SIP revision, ''base year'' emissions inventories for all areas designated as nonattainment for an ozone NAAQS.

The EPA's 2008 ozone NAAQS was published on March 6, 2015 (the 2008 ozone rule). (*See* 80 FR 12264). The 2008 ozone rule established implementation requirements for the 2008 ozone NAAQS, including requirements for base year emissions inventories under CAA section 182(a)(1). (*See id.*). The ozone rule for the 2008 ozone NAAQS is codified at 40 CFR part 51, subpart CC, and the emissions inventory requirements are codified at 40 CFR 51.1315.

40 CFR 51.1315(a) requires each ozone nonattainment area to submit a base year inventory within 2 years of designation. 40 CFR 51.1315(a) also requires that the inventory year be selected consistent with the baseline year for the RFP plan as required by 40 CFR 51.1310(b), which states that the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the provisions of subpart A of 40 CFR part 51, Air Emissions Reporting Requirements, 40 CFR 51.1 through 50. New Jersey selected 2017 as their baseline emissions inventory year for RFP.

For the ozone NAAQS, states are required to submit ozone season day emissions estimates for an inventory calendar year to be consistent with the baseline year for RFP plans as required by 40 CFR 51.1310(b) and 40 CFR 51.1315. Under 40 CFR 51.1310(b), for the 2008 ozone NAAQS, the RFP baseline year is the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under 40 CFR 51 subpart A.

[1] *See* CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110.

[2] The primary ozone standards provide protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations against an array of adverse health effects that include reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality. The secondary ozone standards protect against adverse effects to the public welfare, including those related to impacts on sensitive vegetation and forested ecosystems.

[3] For a detailed explanation of the calculation of the 3-year 8-hour average. (*See* 80 FR 65296 and 40 CFR part 50, Appendix U).

States may use an alternative baseline emissions inventory provided that the year selected corresponds with the year of the effective date of designation as nonattainment for that NAAQS.

40 CFR 51.1315(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1300(q), which states that ozone season day emissions are an average day's emissions for a typical ozone season work weekday. Per EPA's 2017 guidance on emissions inventory development, the selected ozone season should be representative of the conditions leading to nonattainment.[4]

Sections 182(a)(1), 182(a)(3) and 172(c)(3) of the Act require the periodic submission of emissions inventories for the SIP planning process to address the pollutants for the ozone, $PM_{2.5}$ and CO NAAQS. Identifying the calendar year gives certainty to states that require submission of the ozone, $PM_{2.5}$ and CO emission inventories periodically. These requirements allow the EPA, based on the states' progress in reducing emissions, to periodically reassess its policies and air quality standards and revise them as necessary. Most important, the ozone, $PM_{2.5}$ and CO inventories will be used to develop and assess new control strategies that the states may use in attainment demonstration SIPs for the new NAAQS for ozone and $PM_{2.5}$. The inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The inventory plays an important role in modeling demonstrations for areas classified as nonattainment and outside transport regions. For Regional Haze, New Jersey has a Class I area within its borders: Brigantine Wilderness Area. Emissions from New Jersey's sources were also found to impact visibility at several other Class I areas: Acadia National Park and the Moosehorn Wilderness Area in Maine, the Great Gulf Wilderness Area and Presidential Range/Dry River and the Lye Brook Wilderness Area in Vermont. (*See* 76 FR 49711, August 11, 2011). Therefore, an emissions inventory is needed for the Regional Haze air quality planning program effort.

The pollutants inventoried by New Jersey include VOC, NO_X, and CO summertime daily and annual emissions for the ozone areas; and VOC, NO_X, $PM_{2.5}$, PM_{10}, NH_3 and SO_2 annual emissions for the $PM_{2.5}$ and/or Regional Haze areas. For the reasons stated above, EPA would therefore emphasize the importance and benefits of developing a comprehensive, current, and accurate ozone and $PM_{2.5}$/Regional Haze emissions inventory (similar to the 1990 base year inventory effort). In this case, New Jersey selected the 2017 calendar year as the inventory that it will use for planning purposes for ozone and $PM_{2.5}$/Regional Haze areas.

II. Description of State's Submittal

CAA Section 182 subpart 2 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. On November 23, 2021, New Jersey submitted a comprehensive SIP revision that included the 2017 calendar year ozone precursor emission inventory for VOC, NO_X, CO, $PM_{2.5}$, PM_{10}, NH_3 and SO_2 for the Northern New Jersey and Southern New Jersey ozone nonattainment areas. In addition, the SIP revision submittal consisted of the 2017 calendar year statewide periodic emissions inventory for VOC, NO_X and CO, and a revision for the 2011 nonattainment base year emission inventory for the previous Serious classification of the 2008 NAAQS for the Northern New Jersey nonattainment area. On March 31, 2023, New Jersey submitted a technical correction to the EPA regarding their 2017 SO_2 point source inventory emissions by category. The technical correction was necessary because the previously submitted emissions for SO_2 that were incorrect.

The New Jersey emissions inventory SIP revision will ensure that the requirements for emissions inventory measures and reporting are adequately met. To comply with the emissions inventory requirements, New Jersey submitted a complete inventory containing point, area, on-road, and non-road mobile source data, anthropogenic sources, as well as biogenic sources and wildfires and prescribed fires, in the nonattainment areas and accompanying documentation.

III. Evaluation of State's Submittals

A. New Jersey 2017 Periodic Emission Inventory

Based on the EPA's review, the 2017 periodic year emissions inventory for New Jersey's ozone nonattainment areas, and the entire State include essential data elements, source categories, sample calculations, or report documentation to allow the EPA to adequately determine if the inventory is accurate and complete. Consequently, New Jersey's 2017 base year emissions inventory is consistent with the ozone base year emission inventory reporting requirements based on EPA guidance. New Jersey's 2017 base year inventory is consistent with the ozone base year emission inventory reporting requirements for the following reasons:

1. Evidence that the inventory was quality assured by the State and its implementation documented;
2. The point source inventory must be complete;
3. Point source emissions must have been prepared or calculated according to current EPA guidance;
4. The area source inventory must be complete;
5. The area source emissions must have been prepared or calculated according to current EPA guidance;
6. Non-road mobile emissions must have been prepared according to current EPA guidance for all of the source categories;
7. The method (*e.g.,* Highway Performance Monitoring System or a network transportation planning model) used to develop the vehicle miles travelled (VMT) estimates must follow EPA guidance (the VMT development methods were described and documented in the inventory report); and
8. On-road mobile emissions were prepared according to the guidance.

Annual and ozone season day point, area, non-road, on-road, biogenic, and wildfires and prescribed fires emissions are identified in the inventory. Based on the EPA's review, New Jersey satisfies all of the EPA's requirements for purposes of providing a comprehensive accurate, and current inventory of actual emissions for the ozone nonattainment. A summary of the EPA's review is given below:

1. The Quality Assurance (QA) plan was implemented for all portions of the inventory. The QA plan included a QA/Quality control (QC) program for assessing data completeness and standard range checking. Critical data elements relative to the inventory sources were assessed for completeness. QA checks were performed relative to data collection and analysis, and double counting of emissions from point, area, and mobile sources. QA/QC checks were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations. The inventory is well documented. New Jersey provided documentation detailing the methods used to develop emissions estimates for each category. In addition, New Jersey identified the sources of data it used to develop the inventory;
2. The point source emissions are complete in accordance with EPA guidance;
3. The point source emissions were prepared and calculated in accordance with EPA guidance;

[4] EPA, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'', at 75 (May 2017).

4. The area source emissions are complete in accordance with EPA guidance;

5. Area source emissions were prepared and calculated in accordance with EPA guidance;

6. Emission estimates for the non-road mobile source categories are correctly based on the latest non-road mobile model or other appropriate guidance and prepared in accordance with EPA guidance;

7. The method used to develop VMT estimates is in accordance with EPA guidance and was adequately described and documented in the inventory report; and

8. The latest Motor Vehicle Emission Simulator (MOVES2014b) model was used in accordance with EPA guidance.

New Jersey's 2017 ozone emission inventory has been developed in accordance with EPA guidance. Therefore, the EPA is proposing to approve the emission inventory. Detailed emission inventory development procedures can be found in the following document: *Emission Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulation,* dated July 2017; *Using MOVES to Prepare Emission Inventories in State Implementation Plans and Transportation Conformity: Technical Guidance for MOVES2014, 2014b,* first released in August 2018.

Table 1 below shows the statewide summary of the 2017 Annual emissions for VOC, NO_X and CO. Tables 2 and 3 below show the 2017 CO, NO_X, and VOC annual emission by category for the ozone nonattainment areas. Table 4 below shows the summary emission by category, in tons per ozone season day.

TABLE 1—STATEWIDE SUMMARY OF 2017 ANNUAL EMISSIONS

[Tons]

2017 New Jersey State Annual Emissions								
	Point	Area	Onroad	Nonroad	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
VOC	6,809	81,555	28,652	25,476	88,238	5,690	236,420	142,492
NO_X	9,824	23,208	60,681	40,215	2,045	346	136,319	133,928
CO	5,733	61,948	380,323	308,691	11,357	48,191	816,243	756,695

TABLE 2—NORTHERN NEW JERSEY PORTION NJ-NY-CT OZONE NONATTAINMENT AREA 2017 EMISSION INVENTORY

County	VOC							
	Tons per summer day							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Bergen	2.11	23.83	9.06	7.42	4.06	0.08	46.56	42.42
Essex	1.06	17.97	6.11	4.76	2.39	NA	32.30	29.90
Hudson	1.71	15.46	3.52	2.75	1.03	NA	24.47	23.44
Hunterdon	0.13	4.00	1.74	1.74	10.58	0.04	18.23	7.60
Middlesex	15.89	22.32	8.23	5.41	5.82	0.03	57.71	51.86
Monmouth	0.44	16.55	6.83	5.46	12.38	0.20	41.85	29.28
Morris	0.50	14.09	5.25	4.96	14.41	0.07	39.30	24.81
Passaic	0.77	12.15	3.98	2.59	8.36	0.14	27.99	19.49
Somerset	0.89	9.44	3.38	3.77	7.44	0.02	24.94	17.48
Sussex	0.16	3.93	1.54	1.59	17.30	0.15	24.66	7.21
Union	3.23	13.89	5.06	3.20	2.00	0.00	27.39	25.38
Warren	0.31	3.30	1.40	0.93	11.71	0.08	17.73	5.94
Total in Northern NAA Area	27.21	156.93	56.10	44.58	97.48	0.82	383.12	284.82

County	NO_X							
	Tons per summer day							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Bergen	2.16	2.84	15.71	10.03	0.07	0.01	30.82	30.74
Essex	3.74	2.26	11.56	13.99	0.06	NA	31.61	31.55
Hudson	0.85	1.81	6.26	17.89	0.03	NA	26.85	26.82
Hunterdon	1.36	0.39	5.00	2.66	0.46	0.00	9.88	9.42
Middlesex	7.02	2.55	18.72	8.92	0.21	0.00	37.43	37.21
Monmouth	0.42	1.85	10.15	10.54	0.41	0.01	23.38	22.95
Morris	0.72	1.78	10.48	4.88	0.16	0.00	18.03	17.86
Passaic	0.15	1.25	5.37	3.49	0.07	0.01	10.34	10.26
Somerset	4.62	1.16	7.70	4.18	0.27	0.00	17.93	17.66
Sussex	0.10	0.42	1.84	1.38	0.27	0.01	4.02	3.74
Union	8.20	1.49	9.57	5.35	0.05	0.00	24.67	24.62
Warren	0.74	0.30	3.95	0.91	0.30	0.01	6.21	5.91
Total in Northern NAA Area	30.08	18.12	106.31	84.23	2.35	0.06	241.15	238.75

County	CO							
	Tons per summer day							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Bergen	0.92	3.98	122.21	144.08	0.76	0.71	272.66	271.20
Essex	0.97	2.97	81.97	69.21	0.51	NA	155.63	155.12
Hudson	0.70	2.16	38.99	34.28	0.24	NA	76.37	76.13
Hunterdon	1.90	1.21	24.71	28.60	1.35	0.36	58.12	56.42
Middlesex	7.20	3.45	121.47	100.96	1.01	0.25	234.34	233.08
Monmouth	0.31	2.98	99.51	88.71	1.81	1.66	194.98	191.51
Morris	0.54	3.02	75.05	90.22	1.60	0.61	171.04	168.83
Passaic	0.18	1.79	47.11	45.02	0.95	1.19	96.24	94.10
Somerset	2.00	1.83	46.47	71.11	1.04	0.18	122.64	121.41
Sussex	1.33	1.48	17.41	19.01	1.81	1.26	42.29	39.23
Union	2.23	2.08	64.71	59.87	0.45	0.04	129.38	128.89
Warren	0.25	0.98	18.57	12.78	1.29	0.69	34.56	32.58
Total in State	18.52	27.93	758.18	763.85	12.82	6.94	1,588.25	1,568.49

Notes: Biogenic annual emissions are from the USEPA 2017 NEI. 2017 tons per day values were estimated by dividing the annual value by 365.

TABLE 3—SOUTHERN NEW JERSEY PORTION PA-NJ-MD-DE OZONE NONATTAINMENT AREA 2017 EMISSION INVENTORY

County	VOC							
	Tons per summer day							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	0.08	7.27	2.60	3.59	40.71	0.92	55.17	13.54
Burlington	1.06	13.70	4.73	4.26	50.31	0.14	74.20	23.75
Camden	0.67	12.56	4.62	2.55	15.62	0.10	36.12	20.40
Cape May	0.08	2.98	1.04	3.69	14.71	0.06	22.57	7.79
Cumberland	0.43	6.18	1.30	1.34	27.08	0.63	36.95	9.24
Gloucester	5.36	14.43	2.89	2.42	16.97	0.56	42.63	25.10
Mercer	0.36	10.20	7.02	2.60	9.72	0.01	29.91	20.17
Ocean	0.45	14.31	5.69	6.45	41.73	10.97	79.61	26.91
Salem	0.62	2.74	0.74	0.76	17.21	0.03	22.10	4.85
Total in Southern NAA Area	9.10	84.37	30.63	27.66	234.06	13.43	399.25	151.76

County	NO_X							
	Tons per summer day							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	0.35	0.82	5.51	4.56	0.26	0.07	11.57	11.24
Burlington	1.63	1.33	8.98	5.17	0.35	0.01	17.47	17.11
Camden	2.27	1.43	7.73	3.88	0.18	0.00	15.50	15.32
Cape May	0.11	0.30	2.06	4.27	0.18	0.00	6.92	6.73
Cumberland	1.86	0.43	2.10	2.86	0.36	0.03	7.64	7.25
Gloucester	5.59	0.79	5.66	3.48	0.28	0.04	15.85	15.52
Mercer	1.02	1.40	3.60	4.01	0.19	0.00	10.22	10.03
Ocean	2.02	1.34	7.90	6.37	0.26	0.46	18.35	17.63
Salem	3.74	0.20	1.45	1.50	0.38	0.00	7.27	6.89
Total in Southern NAA Area	18.58	8.04	44.99	36.12	2.44	0.62	110.79	107.73

County	CO							
	Tons per summer day							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	0.27	1.57	31.70	34.07	3.43	78.39	149.43	67.61
Burlington	1.12	2.46	65.99	57.60	5.32	131.94	264.44	127.18
Camden	0.61	2.12	58.55	44.31	1.48	107.62	214.69	105.60
Cape May	0.15	0.62	11.41	28.82	1.41	43.27	85.68	41.00
Cumberland	2.02	0.98	13.03	14.11	2.74	37.92	70.80	30.14
Gloucester	2.32	1.48	41.87	38.35	1.78	89.87	175.66	84.01
Mercer	0.65	1.99	49.42	45.39	1.29	98.52	197.26	97.45
Ocean	2.09	2.51	74.09	62.02	4.25	237.28	382.24	140.71
Salem	3.41	0.54	8.38	7.79	1.72	21.57	43.41	20.12
Total in State	12.64	14.27	354.44	332.47	23.42	846.37	1,583.62	713.82

Notes: Biogenic annual emissions are from the USEPA 2017 NEI. 2017 tons per day values were estimated by dividing the annual value by 365.

TABLE 4—2017 STATEWIDE EMISSION INVENTORY BY COUNTY, SOURCE SECTOR AND POLLUTANT

County	VOC							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	25.77	2,478	979	1,556	9,861	188	15,087	5,038
Bergen	277.41	7,875	3,085	2,370	1,482	10	15,100	13,608
Burlington	253.88	4,711	1,779	1,406	10,381	1,559	20,090	8,150
Camden	256.74	4,184	1,729	828	2,739	100	9,837	6,997
Cape May	10.33	1,009	402	1,592	5,829	174	9,016	3,013
Cumberland	90.69	2,078	517	645	7,583	737	11,651	3,331
Essex	286.06	5,914	2,059	1,624	874	331	11,087	9,883
Gloucester	965.17	4,768	1,059	850	2,667	196	10,504	7,642
Hudson	616.40	5,030	1,295	948	375	0	8,264	7,889
Hunterdon	20.60	1,498	630	542	3,862	91	6,645	2,692
Mercer	95.29	3,440	1,351	718	2,220	34	7,859	5,605
Middlesex	1,798.78	7,398	2,556	1,577	2,124	4	15,458	13,330
Monmouth	112.88	5,638	2,083	1,843	4,518	194	14,389	9,677
Morris	115.06	4,990	1,706	1,567	5,261	181	13,819	8,378
Ocean	149.61	5,038	1,941	3,246	8,728	1,760	20,862	10,375
Passaic	154.29	3,980	1,407	906	3,051	17	9,514	6,447
Salem	141.50	918	290	342	2,650	4	4,347	1,692
Somerset	191.80	3,273	1,116	1,055	2,715	43	8,394	5,636
Sussex	57.52	1,597	556	573	6,314	57	9,154	2,783
Union	1,122.24	4,515	1,605	977	730	1	8,950	8,220
Warren	67.12	1,222	508	311	4,273	10	6,391	2,108
Total in State	6,809	81,555	28,652	25,476	88,238	5,690	236,420	142,492

Notes:
1. Onroad and nonroad annual values from are from the USEPA 2017 National Emission Inventory (NEI).
2. Biogenic annual emissions are from the USEPA 2017 NEI.

County	NO_X							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	58.01	731	2,056	1,517	117	14	4,493	4,362
Bergen	455.04	2,534	6,281	3,737	27	1	13,035	13,007
Burlington	168.88	1,180	3,900	1,511	183	103	7,045	6,759
Camden	464.21	1,271	3,220	1,398	77	7	6,438	6,354
Cape May	65.87	269	842	1,637	57	13	2,883	2,813
Cumberland	345.33	371	997	1,029	163	42	2,947	2,742
Essex	1,110.80	2,002	4,290	5,109	20	15	12,548	12,512
Gloucester	1,592.71	728	2,409	1,361	154	16	6,261	6,091
Hudson	135.42	1,581	2,464	5,756	10	0	9,946	9,936
Hunterdon	102.20	350	1,940	679	166	8	3,245	3,070
Mercer	178.12	1,176	2,903	806	107	3	5,173	5,063
Middlesex	1,179.58	2,215	6,657	2,370	77	0	12,498	12,421
Monmouth	95.59	1,668	3,635	3,425	150	14	8,988	8,824
Morris	67.71	1,535	3,973	1,729	59	11	7,374	7,304
Ocean	258.66	1,329	3,338	2,603	121	88	7,738	7,529
Passaic	35.57	1,130	2,223	1,344	24	1	4,757	4,732
Salem	726.41	172	740	538	209	0	2,386	2,176
Somerset	120.89	999	2,920	1,198	97	4	5,339	5,238
Sussex	27.04	362	748	304	100	5	1,547	1,442
Union	2,400.28	1,328	3,585	1,904	18	0	9,235	9,217
Warren	235.86	277	1,559	261	109	1	2,442	2,333
Total in State	9,824	23,208	60,681	40,215	2,045	346	136,318	133,927

Notes:
1. Onroad and nonroad annual values from are from the USEPA 2017 National Emission Inventory (NEI).
2. Biogenic annual emissions are from the USEPA 2017 NEI.

County	CO							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	111.90	2,605	13,995	11,203	1,113	1,585	30,613	27,915
Bergen	251.88	4,402	42,820	39,219	277	83	87,052	86,692
Burlington	286.57	4,969	24,691	15,526	1,309	13,183	59,965	45,472
Camden	129.63	2,835	20,911	12,295	414	846	37,430	36,170
Cape May	52.20	941	5,532	10,939	631	1,470	19,566	17,464
Cumberland	209.70	1,584	6,209	5,270	874	6,252	20,399	13,274
Essex	312.88	2,674	28,144	21,038	185	2,816	55,170	52,169

County	CO							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Gloucester	676.04	2,727	15,272	10,488	412	1,647	31,223	29,163
Hudson	121.83	1,405	15,477	9,977	87	0	27,068	26,981
Hunterdon	18.83	2,328	8,007	7,094	491	766	18,705	17,448
Mercer	141.31	2,652	17,778	11,040	347	288	32,245	31,611
Middlesex	1,409.67	3,831	36,385	25,734	368	30	67,757	67,360
Monmouth	54.89	4,882	29,321	24,211	662	1,640	60,771	58,468
Morris	76.89	5,673	23,026	23,618	584	1,531	54,509	52,394
Ocean	515.58	5,287	25,610	23,355	1,156	14,952	70,874	54,767
Passaic	41.20	2,077	17,069	12,884	348	140	32,560	32,072
Salem	521.27	928	3,968	2,655	421	35	8,528	8,072
Somerset	99.05	2,955	13,105	17,250	381	364	34,155	33,410
Sussex	81.97	3,341	5,971	5,448	660	478	15,980	14,843
Union	545.67	1,934	20,801	15,891	166	5	39,342	39,172
Warren	73.73	1,918	6,231	3,556	471	81	12,332	11,779
Total in State	5,733	61,948	380,323	308,691	11,357	48,191	816,243	756,695

Notes:
1. Onroad and nonroad annual values from are from the USEPA 2017 National Emission Inventory (NEI).
2. Biogenic annual emissions are from the USEPA 2017 NEI.

County	$PM_{2.5}$							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	15.98	498	50	94	NA	70	729	659
Bergen	98.51	1,082	224	311	NA	4	1,720	1,716
Burlington	35.17	887	123	108	NA	578	1,732	1,154
Camden	42.80	557	111	102	NA	38	850	812
Cape May	18.55	270	22	85	NA	66	461	395
Cumberland	215.80	345	27	42	NA	269	899	631
Essex	91.81	692	158	208	NA	119	1,269	1,150
Gloucester	453.73	514	72	100	NA	74	1,214	1,139
Hudson	45.04	462	105	176	NA	0	788	788
Hunterdon	10.49	507	69	55	NA	35	677	642
Mercer	48.02	519	100	84	NA	13	764	751
Middlesex	375.27	868	232	188	NA	1	1,664	1,663
Monmouth	33.24	1,077	113	205	NA	73	1,501	1,429
Morris	7.18	1,007	140	174	NA	66	1,395	1,328
Ocean	35.77	1,016	88	169	NA	634	1,943	1,309
Passaic	1.03	498	77	108	NA	6	690	683
Salem	134.77	283	21	23	NA	2	463	462
Somerset	7.16	604	119	122	NA	17	869	853
Sussex	4.31	553	25	33	NA	22	638	617
Union	378.89	532	128	130	NA	0	1,168	1,168
Warren	30.95	363	49	26	NA	4	472	469
Total in State	2,084	13,136	2,055	2,543	NA	2,090	21,908	19,818

Notes:
[1] Onroad and nonroad annual values from are from the USEPA 2017 National Emission Inventory (NEI).
[2] Area Source fugitive dust emissions are post-adjustment.

County	SO_2							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	186.89	19	24	30	NA	7	267	260
Bergen	42.59	44	73	11	NA	0	171	171
Burlington	45.19	32	46	48	NA	53	225	171
Camden	80.49	21	40	13	NA	4	158	155
Cape May	36.21	6	10	5	NA	7	64	57
Cumberland	195.12	15	11	13	NA	23	257	234
Essex	71.66	45	48	334	NA	9	507	498
Gloucester	528.98	17	28	18	NA	8	600	592
Hudson	35.26	19	27	62	NA	0	143	143
Hunterdon	0.80	16	19	2	NA	4	41	37
Mercer	10.96	17	34	6	NA	1	70	68
Middlesex	111.70	28	78	14	NA	0	231	231
Monmouth	14.64	55	58	20	NA	7	154	147
Morris	1.14	58	49	5	NA	6	119	113
Ocean	48.45	26	43	18	NA	52	187	135
Passaic	0.08	40	27	3	NA	1	71	70

County	SO_2							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Salem	675.08	9	7	7	NA	0	699	699
Somerset	1.97	18	33	3	NA	2	59	57
Sussex	5.62	42	11	1	NA	2	62	60
Union	101.95	16	40	16	NA	0	174	174
Warren	26.28	13	14	1	NA	0	54	54
Total in State	2,221	555	721	630	NA	186	4,313	4,127

Notes: Onroad and nonroad annual values from are from the USEPA 2017 National Emission Inventory (NEI).

County	Ammonia							
	Tons per year							
	Point sources	Area sources	Onroad sources	Nonroad sources	Biogenic	Wildfire and prescribed burning	Total	Total anthropogenic
Atlantic	17.60	124	84	2	NA	13	240	227
Bergen	286.02	78	220	6	NA	1	591	591
Burlington	35.24	280	142	2	NA	108	568	460
Camden	18.07	47	118	2	NA	7	193	186
Cape May	0.69	44	33	2	NA	12	92	80
Cumberland	30.40	149	35	1	NA	51	267	216
Essex	67.96	167	144	4	NA	23	406	383
Gloucester	130.82	171	90	2	NA	14	407	393
Hudson	31.29	46	73	4	NA	0	154	154
Hunterdon	1.32	266	54	1	NA	6	329	322
Mercer	7.98	118	105	2	NA	2	235	233
Middlesex	241.03	106	229	4	NA	0	580	579
Monmouth	51.16	313	178	4	NA	14	561	547
Morris	3.30	134	140	3	NA	13	293	280
Ocean	76.85	162	142	4	NA	122	508	385
Passaic	0.35	49	81	2	NA	1	134	132
Salem	4.20	336	24	1	NA	0	365	364
Somerset	0.76	89	91	2	NA	3	185	182
Sussex	0.04	249	33	1	NA	4	287	283
Union	107.41	29	116	3	NA	0	255	255
Warren	7.55	293	40	0	NA	1	342	341
Total in State	1,120	3,249	2,173	53	NA	396	6,990	6,594

Notes: Onroad and nonroad annual values from are from the USEPA 2017 National Emission Inventory (NEI).

B. New Jersey Nonattainment 2011 Revision Emission Inventory

On June 11, 2015, New Jersey submitted the 2011 ozone emissions inventory for the Northern New Jersey and Southern New Jersey ozone nonattainment areas and the 2011 emissions inventory for the $PM_{2.5}$/ Regional Haze areas and requested that EPA approve the emissions inventory SIP revision. EPA approved New Jersey's 2011 emission inventory. (*See* 82 FR 44099, September 6, 2017). Due to the reclassification of the Northern New Jersey and Southern New Jersey ozone nonattainment areas to serious nonattainment for the 2008 ozone NAAQS, New Jersey made revisions to the 2011 emission inventory. New Jersey affirmed in its November 23, 2021, submission that it is meeting the 2008 ozone NAAQS emission inventory requirements pursuant to CAA sections 182(a)(3)(A) and 182(c). The emission inventory requirement is addressed through the submission of the 2011 baseline emission inventory. Minor updates were made to the 2011 base year emissions inventory which included essential data elements, source categories, sample calculations, or report documentation according to the EPA guidance to allow the EPA to adequately determine if the inventory is accurate and complete. Consequently, New Jersey's 2011 base year emissions inventory was consistent with the ozone base year emission inventory reporting requirements based on EPA guidance.

IV. Proposed Action

The New Jersey 2017 emission inventory SIP revision will ensure that the requirements for emission inventory measures and reporting are adequately met. To comply with the emission inventory requirements, on November 23, 2021, New Jersey submitted the complete inventory containing point, area, on-road, non-road mobile, biogenic, and wildfires and prescribed fires source data, and accompanying documentation.

The EPA is proposing to approve New Jersey's 2017 and revised 2011 emission inventories SIP revision submittal as meeting the essential reporting requirements for emission inventories.

The EPA has also determined that the SIP revision meets the requirements for emission inventories in accordance with EPA guidance. Therefore, EPA is proposing to approve the revision to the New Jersey SIP that pertains to the 2017 calendar year summer season daily and annual ozone precursor emission inventories for VOC, NO_x and CO for the New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT, and the Southern New Jersey-Philadelphia-Delaware-Maryland nonattainment areas.

In addition, the EPA is proposing to approve the 2017 calendar year $PM_{2.5}$/ Regional Haze emissions inventory that was developed statewide for New Jersey. The pollutants included in the inventory are annual emissions for VOC, NO_x, $PM_{2.5}$, PM_{10}, NH_3 and SO_2.

Additionally, the EPA is proposing to approve New Jersey's certification that it has met the requirements for nonattainment emission inventory and fully meets the requirements of the Act for the 2008 8-hour ozone NAAQS.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region 2 Office by the method discussed in the **ADDRESSES** section of this action.

V. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards;

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The New Jersey Department of Environmental Protection did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2023–10337 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 88, No. 97

Friday, May 19, 2023

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meeting Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, and the Agriculture Improvement Act of 2018, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board.

DATES: The NAREEE Advisory Board will meet in person on June 6–7, 2023.

Public Participation/Oral Comments: This meeting is open to the public. Interested individuals may participate in-person or virtually. To attend the meeting via Zoom and/or make oral comments, you must contact Ms. Michele Simmons at email: *nareee@usda.gov* at least 5 business days prior to the meeting (no later than May 30, 2023).

Written Comments: The public may file written comments no later than May 30, 2023. Written comments from the public may be submitted via email at *nareee@usda.gov* to the attention of Ms. Michele Simmons.

All statements will become a part of the official record of the NAREEE Advisory Board and will be kept on file for public review in the NAREEE Advisory Board's Office. Written comments by attendees and other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (no later than 5 p.m. eastern standard time on Wednesday, June 21, 2023).

ADDRESSES: The meeting location on June 6, 2023: USDA Whitten Building, 1400 Independence Ave. SW, Room 107–A, Washington, DC 20250. The meeting location on June 7, 2023: USDA, Yates Building, 201 14th Street SW, Room 2SC01, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Kate Lewis, Executive Director/Designated Federal Official, or Ms. Michele Simmons, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 579–6610 or email: *nareee@usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the meeting: The Board will meet to provide advice and recommendations on the top priorities and policies for food and agricultural research, education, extension, and economics. The main focus of this meeting will be to receive updates from the REE Under Secretary and the leadership from the REE agencies; discuss the Board's plan for their annual Relevancy and Adequacy (R&A) assessment of REE's main science and research priorities; and hear updates from the Board's committees and subcommittees.

An agenda for this two-day meeting may be received by sending an email to the attention of Ms. Michele Simmons @ *nareee@usda.gov*

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 16, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–10727 Filed 5–18–23; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program and WIC Farmers' Market Nutrition Program (FMNP) Waivers

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This collection is a new information collection for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC Farmers' Market Nutrition Program (FMNP) which contains the reporting burden associated with requesting waivers of WIC and WIC FMNP Program requirements as authorized under the American Rescue Plan Act of 2021 and the American Baby Formula Act of 2022. In order to receive waivers authorized by these statutes, WIC and WIC FMNP State agencies must submit a request that establishes that they have met the requirements for a waiver.

DATES: Written comments must be received on or before July 18, 2023.

ADDRESSES: The Food and Nutrition Services, USDA, invites interested persons to submit written comments.

• *Preferred Method:* Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

• *Mail:* Send comments to: Allison Post, Chief, WIC Administration, Benefits, and Certification Branch, Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314.

• *Email:* email comments to *Allison.Post@usda.gov*

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Allison Post at (703) 457–7708 or *Allison.Post@usda.gov.*

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program and WIC Farmers' Market Nutrition Program (FMNP) Waivers.

Form Number: Not applicable.

OMB Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: Recently, USDA received legislative authority to grant waivers to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC Farmers' Market Nutrition Program (FMNP) State agencies. The American Rescue Plan Act of 2021 (ARPA; Pub. L 117–2) grants temporary waiver authority to WIC and WIC FMNP for the purpose of outreach, modernization, and innovation and The Access to Baby Formula Act of 2022 (ABFA; Pub. L. 117–129) grants permanent waiver authority to WIC during certain emergencies and supply chain disruptions. This burden collection covers activities associated with the waiver request process.

American Rescue Plan Act of 2022

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA; Pub. L. 117–2). ARPA amends Section 17 of the Child Nutrition Act of 1966 (CNA; Pub. L. 111–296) to provide WIC and WIC FMNP $390 million through FY 2024, to carry out outreach, innovation, and program modernization efforts, including appropriate waivers and flexibilities, to increase participation and redemption of benefits. The waiver authority provided under ARPA does not apply to the content of the WIC food packages, funding or regulatory nondiscrimination requirements. In order to request and utilize approved waivers under the authority of ARPA, WIC and WIC FMNP State agencies will be required to perform administrative tasks that will contribute to their reporting burden hours.

ARPA waivers are intended to provide flexibility to WIC and WIC FMNP State agencies as they carry out outreach, innovation, and program modernization efforts. In coordination with ARPA-funded projects, FNS anticipates that WIC and WIC FMNP State agencies will request waivers that will allow them to implement the grant-funded projects. Additionally, FNS anticipates that WIC and WIC FMNP State agencies will be interested in testing modernization projects that will not require funding, such as extending WIC certification periods to align household certification periods. FNS will offer three types of waivers to State agencies under ARPA's authority: (1) waivers requiring additional information, (2) accelerated waivers, and (3) ad hoc waivers.

Waiver requests requiring additional information are waivers identified and pre-cleared by FNS as allowable under ARPA's waiver authority for State agencies to request but require State agencies to provide supplemental information to support their request. These waiver requests are estimated to take 1 hour to complete. FNS estimates that all 89 WIC State agencies and 51 WIC FMNP State agencies will request an average of 5 waivers requiring additional information annually. Like waiver requests requiring additional information, accelerated waivers are waivers identified and pre-cleared by FNS as allowable under ARPA's waiver authority. Unlike waiver requests requiring additional information, these waivers will not require State agencies to submit additional information along with their request. It is estimated that State agencies will take 10 minutes to fill out a request form for an accelerated waiver. FNS estimates that all 89 WIC State agencies and 51 WIC FMNP State agencies will request an average of 4 accelerated waivers annually. Finally, FNS will also offer additional, novel waivers at the request of the State agency that do not fall under the waivers requiring additional information and accelerated waivers as they have not already been identified and pre-cleared by FNS as allowable under ARPA's waiver authority. These ad hoc waivers will meet the specific needs of the State agency to implement innovative and modern WIC and WIC FMNP enhancements. It is estimated that the ad hoc waiver requests will take 2 hours to complete. FNS anticipates that 10 WIC State agencies and 5 WIC FMNP State agencies will request an average of 1 ad hoc waiver annually. The estimated total burden for ARPA waiver requests is 823.52 burden hours.

Access to Baby Formula Act of 2022 Waiver Authority

On May 21, 2022, President Biden signed into law the Access to Baby Formula Act of 2022 (ABFA; Pub. L. 117–129). ABFA amends section 17 of the CNA to establish waiver authority for the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC.

USDA has authority under ABFA to waive or modify any statutory requirement under section 17 of the CNA or any regulatory requirement, provided that the following two conditions are met: (1) such requirements cannot be met by WIC state agencies under the conditions that prompted either the emergency period or the supply chain disruption, including a supplemental food product recall, and (2) exercising the waiver authority is necessary to serve participants and does not substantially weaken the nutritional quality of supplemental foods. ABFA also provides USDA with the ability to issue the waiver or modification to multiple WIC State agencies or on a nationwide basis.

To request and utilize approved waivers under the authority of ABFA, WIC State agencies will be required to perform administrative tasks that will contribute to their reporting burden hours. FNS estimates that 10 WIC State agencies will request an average of three waivers each in response to emergencies, disasters, and supply chain disruptions. It is estimated that State agencies will take 15 minutes to fill out one request form. The estimated total burden is 7.5 burden hours.

Affected Public: State and Tribal government. Respondent groups include WIC and WIC FMNP State agencies (including Indian Tribal Organizations and U.S. Territories).

Estimated Number of Respondents: The total estimated number of respondents is 140 for the proposed information collection request associated with OMB Number 0584-NEW. This includes: 89 WIC State agencies and 51 WIC FMNP State agencies.

Estimated Number of Responses per Respondent: The total estimated number of responses per respondent for this collection is 9.32.

Estimated Total Annual Responses: The total estimated number of responses is 1,305 for the proposed information collection request associated with OMB Number 0584–NEW.

Estimated Time per Response: The estimated time per response averages .64 hours across waiver types. For the reporting burden, the estimated time per response varies from approximately 10 minutes to 2 hours depending on the waiver type being requested.

Estimated Total Annual Burden on Respondents: The estimated total for reporting burden is 831 hours.

See the table below for more detail on the estimated total annual burden.

WIC AND WIC FMNP WAIVER BURDEN TABLE—OMB# 0584–NEW

Affected public	Instruments	Est. Number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Est. total burden
ARPA						
WIC State Program Staff	Accelerated waivers	89	4	356	0.17	59.45
WIC State Program Staff	Waivers requiring additional information.	89	5	445	1	445.00
WIC State Program Staff	Ad hoc waivers	10	1	10	2	20.00
WIC FMNP State Program Staff.	Accelerated waivers	51	4	204	0.17	34.07
WIC FMNP State Program Staff.	Waivers requiring additional information.	51	5	255	1	255.00
WIC FMNP State Program Staff.	Ad hoc waivers	5	1	5	2	10.00
Subtotal ARPA Reporting		140	9.11	1,275	0.65	823.52
ABFA						
WIC State Program Staff	Waiver request form	10	3	30	0.25	7.5
Subtotal ABFA Reporting		10	3	30	0.25	7.5
Grand Total Reporting Burden		140	9.32	1,305	0.64	831.02

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–10752 Filed 5–18–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Publish for Public Comment Proposed Permanent Hunting Order in the Wall Ranger District of the Buffalo Gap National Grassland

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, is giving notice of its intent to publish for public comment a proposed permanent order prohibiting prairie dog hunting on 106,568.5 acres of the Wall Ranger District in the Buffalo Gap National Grassland. At the end of the advance notice period, the Forest Service will seek public comments, as specified in this notice, on the proposed permanent hunting order.

DATES: Advance notice of the opportunity to provide public comment on the proposed permanent hunting order is being provided until May 26, 2023. Beginning on May 26, 2023, the Forest Service will accept comments on the proposed permanent hunting order for 60 days. The notice of opportunity for public comment will be posted on the Nebraska National Forests and Grasslands (NNFG) web page at *www.fs.usda.gov/alerts/nebraska/alerts-notices.*

ADDRESSES: The proposed permanent hunting order, the justification for the proposed permanent order, and map are posted on the Forest Service's Regulations and Policies web page at *www.fs.usda.gov/about-agency/regulations-policies.*

FOR FURTHER INFORMATION CONTACT: Julie Johndreau, Recreation Program Manager, 308–432–0330 or *julie.johndreau@usda.gov.* Individuals who use telecommunication devices for the deaf and hard of hearing may call the Federal Relay Service at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Advance Notice and Public Comment Procedures

Section 4103 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, title IV, (Sportsmen's Access and Related Access)), hereinafter ''the Dingell Act,'' requires the Forest Service to provide advance notice and opportunity for public comment before temporarily or permanently closing any National Forest System lands to hunting, fishing, or recreational shooting. Section 4103 applies to the proposed permanent order prohibiting prairie dog hunting on 106,568.5 acres of the Wall Ranger District in the Buffalo Gap National Grassland. This notice meets the requirement in section 4103 to publish a notice of intent in the **Federal Register** in advance of the public comment period.

Following the notice of intent, section 4103(b)(2) of the Dingell Act requires an opportunity for public comment on proposed temporary or permanent hunting, fishing, or recreational shooting orders. Because the proposed order would permanently prohibit prairie dog hunting on 106,568.5 acres of Wall Ranger District in the Buffalo Gap National Grassland, the public comment period must be at least 60 days. Beginning on May 26, 2023, the Forest Service will accept public comments on the proposed permanent order for 60 days. The notice of opportunity for public comment will be posted on the NNFG's web page at *www.fs.usda.gov/alerts/nebraska/alerts-notices.*

Section 4103(b)(2) of the Dingell Act requires the Forest Service to respond to public comments received on the proposed permanent order before issuing a final permanent order, including an explanation of how any significant issues raised by the comments were resolved and, if applicable, how resolution of those issues affected the proposed permanent order or the justification for the proposed permanent order. The final permanent order, the justification for the final permanent order, and the response to comments on the proposed permanent order will be posted on the NNFG's web page at *www.fs.usda.gov/alerts/nebraska/alerts-notices.*

Background and Need

The proposed permanent order would implement a requirement in the Nebraska National Forests and Grasslands (NNFG) 2001 Revised Land and Resource Management Plan (LRMP), as amended in 2005 and 2008, to prohibit prairie dog hunting on 106,568.5 acres of Management Area 3.63 in the Wall Ranger District of the Buffalo Gap National Grassland. The effects of this prohibition were analyzed in the environmental impact statements for the 2001 LRMP and its subsequent amendments. The purpose of the LRMP direction and the proposed permanent order is to maintain quality ferret habitat with a sufficient food source (prairie dogs), prevent incidental take of the endangered black-footed ferret, and protect the safety of the Agency's personnel and contractors as they study and manage the ferrets.

The proposed permanent order, the justification for the proposed permanent order, and map are posted on the Forest Service's Regulations and Policies web page at *www.fs.usda.gov/about-agency/regulations-policies.*

Dated: April 7, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–10638 Filed 5–18–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Northwest National Scenic Trail Advisory Council

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest National Scenic Trail Advisory Council will hold a public meeting according to the details shown below. The committee is authorized under the National Trails System Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to advise and make recommendations to the Secretary of Agriculture, through the Chief of the Forest Service, on matters relating to the Pacific Northwest National Scenic Trail as described in the Act.

DATES: A virtual meeting will be held on June 15, 2023, 9:00 a.m.–3:00 p.m. and June 16, 2023, 9:00 a.m.–3:00 p.m. Pacific Daylight Time (PDT).

Written and Oral Comments: Anyone wishing to provide virtual oral comments must pre-register by 11:59 p.m. PDT on June 12, 2023. Written public comments will be accepted by 11:59 p.m. PDT on June 12, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

All council meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held virtually. The public may also join virtually via the Teams app or the internet (*https://teams.microsoft.com/l/meetup-join/19%3ameeting_NWU1ZjVmNWUtY2VmYy00ZDk1LWJiODQtY2ViZjU2N2IxYmRh%40thread.v2/0?context=%7b%22Tid%22%3a%22ed5b36e7-01ee-4ebc-867e-e03cfa0d4697%22%2c%22Oid%22%3a%22d0782174-12c2-4aac-9c91-8e89886ec552%22%7d*) or call in (audio only) at 202–650–0123 with conference ID 204679648#. Council information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/pnt/working-together/advisory-committees/?cid=fseprd505622* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *becky.blanchard@usda.gov or* via mail (*i.e.,* postmarked) to Becky Blanchard, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PDT, June 12, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *becky.blanchard@usda.gov* or via mail (*i.e.,* postmarked) to Becky Blanchard, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Becky Blanchard, Designated Federal Officer (DFO), by phone at 503–808–2449 or email at *becky.blanchard@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Select a Chairperson;
2. Discuss the draft comprehensive plan for the Pacific Northwest National Scenic Trail and make any recommendations to the Forest Service regarding the draft comprehensive plan; and
3. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the

USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 15, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–10749 Filed 5–18–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a virtual business meeting via *ZoomGov* on Tuesday, May 16, 2023, from 12:00 p.m.–12:30 p.m. Central Time, for the purpose of discussing and approving an Op-Ed to accompany their interim report on mental health care in TJJD.

DATES: The meeting will take place on:

• Tuesday, May 16, 2023, from 12:00 p.m.–12:30 p.m. CT.*ZOOM LINK TO JOIN:*

• Tuesday, May 16th: *https://www.zoomgov.com/meeting/register/vJIscOuhqjoqHBymeiHqlFsv3mNFYTglXnA.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *bpeery@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion and Vote
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: May 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–10678 Filed 5–18–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maine Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Maine Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold virtual monthly meetings for report discussion on indigent legal services. The committee will meet on the following 2nd Thursdays: June 8 and July 13, 2023; both at 12:00 p.m. (ET).

DATES: Thursdays, June 8 and July 13, 2023; at 12:00 p.m. (ET)

ADDRESSES: The meetings will be held via Zoom.

Zoom Link (Audio/Visual): https://tinyurl.com/5yr4dspy; password: USCCR–ME.

Join by Phone (Audio Only): 1–551–285–1373; Meeting ID: 161 655 9331#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, Designated Federal Official at *mtrachtenberg@usccr.gov* or via phone at 202–809–9618.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 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 Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Maine 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 *ebohor@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Draft Report on Indigent Legal Services
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: May 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–10679 Filed 5–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–6–2023]

Foreign-Trade Zone (FTZ) 30; Authorization of Limited Production Activity; Albion Laboratories, Inc.; (Mineral Amino Acid Chelates); Ogden, Utah

On January 13, 2023, Albion Laboratories, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 30E, in Ogden, Utah.

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 4152, January 24, 2023). On May 15, 2023, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including section 400.14, with further review warranted prior to the potential use of glycine as a foreign status component.

Dated: May 15, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–10708 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Oleg Sergeyevich Patsulya, 15811 Collins Ave., Unit 4102, Sunny Isles Beach, Florida 33160; Vasilii Sergeyevich Besedin, 2960 NE 207th St., Unit 502, Aventura, Florida 33160; MIC P&I, LLC, 15811 Collins Ave., Unit 4102, Sunny Isles Beach, FL 33160 and 2046 McKinley St., Ste. 4, Hollywood, FL 33020; Intermodal Maldives, 1st Floor—H. Maaram, Ameeru Ahmed Magu, Male, Republic of Maldives; JSC Smartavia Airlines, "Arkhangelsk" Airport, 4/1, Arkhangelsk Russia, 163053; Order Temporarily Denying Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Oleg Sergeyevich Patsulya, Vasilii Sergeyevich Besedin, MIC P&I, LLC, Intermodal Maldives, and JSC Smartavia Airlines. OEE's request and related information indicates that these parties are located in the United States, the Republic of Maldives, and/or the Russian Federation, at the respective addresses listed on the caption page of this order and on pages 9–11, *infra,* and that Patsulya and Besedin are Russian nationals who own, control and/or are affiliated with MIC P&I, LLC.

I. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''[l]ack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. OEE'S Request for a Temporary Denial Order

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are

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[1] The Regulations, currently codified at 15 CFR parts 730–774 (2020), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders.

intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage.

As of February 24, 2022, any item classified under any Export Classification Control Number (''ECCN'') in Categories 3 through 9 of the Commerce Control List (''CCL'') requires a license to be exported or reexported to Russia. *See* 87 FR 12226 (Mar. 3, 2022). As of April 8, 2022, the license requirements for Russia were expanded to cover all items on the CCL. *See* 87 FR 22130 (Apr. 14, 2022). These rules were codified in title 15 CFR 746.8, which state, ''a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia or Belarus any item subject to the EAR and specified in any Export Control Classification Number (ECCN) on the CCL.''

In its request, OEE has presented evidence that Oleg Sergeyevich Patsulya and Vasilii Sergeyevich Besedin, operating in the United States and working together on behalf of MIC P&I, LLC (''MIC''), have engaged in the attempted procurement, export, and diversion of U.S.-origin commodities, including through Intermodal Maldives (''Intermodal''), for ultimate end use in Russia without the proper BIS export licenses. These items include civil aviation parts and components. OEE has also presented evidence indicating that Patsulya and Besedin have undertaken procurement efforts, in part, on behalf of Russian airline JSC Smartavia Airlines (''Smartavia''), as well as Rossiya Airlines [2] and Pobeda Airlines,[3] both Russian airlines on the BIS Denied Persons List (''DPL'').

A. Procurement Efforts for Russian Airlines

OEE's ongoing investigation has revealed that, between in or around September and October 2022, Patsulya and Besedin, who live in the United States, attempted to procure more than two million dollars of U.S. origin civilian aircraft parts from one U.S. supplier, including large quantities of wheels, tires, and brakes. In particular, OEE has presented evidence that Patsulya and Besedin, acting as representatives of MIC, attempted to procure multiple quantities of an aircraft brake assembly, identified as Goodrich Part number 2–1740–1 (the ''Goodrich brake assembly''), which is classified as ECCN 9A991.d, controlled for Anti-terrorism reasons, and would require a license for export to Russia. After Patsulya, Besedin, and MIC failed in their attempts to purchase the Goodrich brake assembly from this supplier, they subsequently purchased the brake assembly from another U.S. supplier.

OEE's investigation has also determined that, beginning in and around May 2022, shortly prior to these procurement efforts, Patsulya began communicating with various Russian entities, including parties on the DPL, about supplying them with various aircraft parts and components. For example, OEE has presented evidence that, in June 2022, Smartavia provided Patsulya with a list of aircraft parts it sought to obtain, including the Goodrich brake assembly. On July 14, 2022, Patsulya emailed Smartavia with a quotation for delivery of various aircraft parts and components to Smartavia in Moscow, including two units of the Goodrich brake assembly. In August 2022, immediately after receiving a quotation for the Goodrich brake assemblies from a U.S. company, Patsulya emailed Smartavia again to offer two units for $105,000 per unit. On August 16, 2022, Smartavia provided Patsulya with a purchase order for the two units. Patsulya responded with an invoice, identified as PI–0017–022, reflecting a unit price of $105,000 and then subsequently sent himself an invoice, also identified as PI–0017–022, purportedly from an intermediary company to MIC.

On August 22, 2022, Besedin received an email from a U.S. parts supplier with information about five units of the Goodrich brake available for purchase. Besedin provided the information to Patsulya, who in turn sent Smartavia an invoice for five units of the Goodrich brake assembly, reflecting a total cost of $515,000. On August 30, 2022, Smartavia provided Patsulya with proof of a wire transfer reflecting a payment of $515,000.

OEE's request is also based on facts demonstrating that Patsulya began communicating with representatives of Rossiya Airlines and Pobeda Airlines about procurement of U.S. origin aircraft parts and components while both airlines were on the DPL. Specifically, on August 31, 2022, while Rossiya Airlines was subject to a TDO, Patsulya emailed a Rossiya Airlines representative to offer procurement of U.S. origin aircraft parts and supplies, representing himself and MIC as a supplier for Smartavia and Russian Ministry of Defense affiliates. Additionally, in October 2022, while Pobeda Airlines was subject to a TDO, Patsulya communicated with a Pobeda Airlines representative about payment options for the Goodrich brake assembly and the TDO imposed against the airline.

B. Intermodal Maldives

As stated in OEE's request, OEE's investigation determined that shipments to Russia were being routed through Intermodal, a company in the Republic of Maldives. Based on evidence presented by OEE, Intermodal first began receiving exports from the United States in May of 2022 and, as of October 2022, had received approximately 212 shipments, the majority appearing to be aircraft parts. For example, OEE's investigation identified the following shipments to Russia between June and October 2022: (1) a Russian freight forwarder used Intermodal to receive a shipment of U.S. origin civil aircraft parts; (2) a Russian customer used Intermodal to forward and route lab equipment to Russia without the knowledge of the U.S. exporter; and (3) a shipment of directional drilling tools was sent to Moscow, Russia, through Intermodal. None of the export control documents related to these three shipments indicated that the items were destined for export to Russia. OEE has also presented evidence that another shipment to Intermodal which was destined for Russia contained a rotary actuator, which was designated as EAR99. Although some of the non-aircraft parts are designated as EAR99, OEE has reason to believe that a license would have been required pursuant to section 746.5 of the EAR (Russian industry sector sanctions) and that no such license was obtained.

OEE's request is also based on facts revealed during an end-use check conducted by BIS at Intermodal on February 22, 2023. For example, the end-use check determined that Intermodal is a designated cargo sales agent for PJSC Aeroflot,[4] another Russian airline that has been on the BIS DPL since April 7, 2022. OEE also presented evidence that four of the five shipments specifically inquired about

[2] A TDO was first issued against Rossiya Airlines on May 20, 2022 and published in the **Federal Register** on May 25, 2022. *See* 87 FR 31856. The TDO was renewed on November 15, 2022 and published in the **Federal Register** on November 21, 2022. *See* 87 FR 70780. The TDO was renewed again on May 12, 2023.

[3] A TDO was first issued against Pobeda Airlines on June 24, 2022 and published in the **Federal Register** on June 29, 2022. *See* 87 FR 38707. The TDO was renewed on December 20, 2022 and published in the **Federal Register** on December 23, 2022. *See* 87 FR 78925.

[4] A TDO was first issued against Aeroflot on April 7, 2022 and published in the **Federal Register** on April 12, 2022. *See* 87 FR 21611. The TDO was renewed on October 3, 2022 and again on March 29, 2023. *See* 88 FR 19609.

went to Russia, including one destined for Pobeda Airlines and another for Russian airline UTair Aviation JSC (''UTair'').[5] The destination of the fifth shipment could not be determined.

C. MIC and Intermodal Detentions

OEE has also presented evidence related to its November 29, 2022 detention of a shipment destined for Intermodal. Specifically, the shipment detained by OEE included two units of the Goodrich brake assemblies, classified as ECCN 9A991.d and controlled for Anti-terrorism reasons. OEE's ongoing investigation revealed that the brake assemblies were purchased by MIC and that Besedin personally traveled to a warehouse location to inspect the brakes. Although the brake assemblies would have required a license for export to Russia, no such license was obtained. On January 3, 2023, OEE detained another shipment of the Goodrich brake assemblies purchased by Patsulya and Besedin. Although Besedin initially told the vendor that the brake assemblies were destined for Intermodal, the information was later changed to reflect shipping to Turkey after Besedin was alerted by a U.S. freight forwarder of issues with shipping to Intermodal. Moreover, OEE's requests include facts demonstrating that Patsulya and Besedin gave various and conflicting information about the ultimate destination and end user of the Goodrich brake assemblies.

D. Risk of Imminent Violation

As detailed in OEE's request and related information, since May 2022, Patsulya and Besedin, through MIC, have engaged in repeated attempts to procure U.S. origin commodities for Russian end users, including parties on the DPL. These efforts have involved multiple U.S. suppliers, indicating that when one procurement attempt fails, Patsulya and Besedin will simply continue engaging other suppliers. Moreover, OEE's request demonstrates that they have been actively promoting themselves as able to supply aircraft parts and components to Russian airlines, including those on the DPL. As detailed above, OEE's request also indicates that Smartavia has attempted to obtain U.S. origin commodities, including the Goodrich brake assemblies, on multiple occasions, and that Patsulya and Besedin self-identified as Smartavia's supplier.

[5] A TDO was first issued against UTair on April 7, 2022, and published in the **Federal Register** on April 12, 2022. *See* 87 FR 21616. The TDO was renewed on October 3, 2022 and again on March 29, 2023. *See* 88 FR 19911.

OEE's request also reflects that between May 18, 2022 and February 28, 2023, Intermodal was listed as the ultimate or intermediate consignee on 248 exports valued at over $5.1 million and that Patsulya and Besedin, through MIC, have made six attempts to export from the United States, including one to Intermodal and a second initially destined for Intermodal. Additionally, OEE has presented evidence that, as recently as April 20, 2023, Patsulya and Besedin have been emailing OEE agents in continued attempts to retrieve the detained aircraft Goodrich brake assemblies, maintaining that they were intended for use in Turkey and suggesting that their procurement efforts remain ongoing.

III. Findings

As described above, I find that the evidence presented by BIS demonstrates that a violation of the Regulations by the above-captioned parties is imminent in both time and degree of likelihood. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Oleg Sergeyevich Patsulya, Vasilii Sergeyevich Besedin, MIC P&I, LLC, Intermodal Maldives, and Smartavia Airlines in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the Regulations given the deliberate, covert, and determined nature of the misconduct and clear disregard for complying with U.S. export control laws.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with section 766.24 of the Regulations.

It is therefore ordered:

First, that OLEG SERGEYEVICH PATSULYA, with an address at 15811 Collins Ave Unit 4102, Sunny Isles Beach, Florida 33160; VASILII SERGEYEVICH BESEDIN, with an address at 2960 NE 207th St, Unit 502, Aventura, Florida 33160; MIC P&I, LLC, with an address at 15811 Collins Ave, Unit 4102, Sunny Isles Beach, FL 33160 and 2046 McKinley St., Ste 4, Hollywood, FL 33020; and INTERMODAL MALDIVES with an address at 1st Floor—H. Maaram Ameeru Ahmed Magu, Male, Republic of Maldives; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that JSC SMARTAVIA AIRLINES with an address at ''Arkhangelsk'' airport, 4/1 Arkhangelsk Russia, 163053, and when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Smartavia any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Smartavia of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Smartavia acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Smartavia of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Smartavia in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Smartavia, or service any item, of whatever origin, that is owned, possessed or controlled by Smartavia if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Fifth, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Oleg Sergeyevich Patsulya, Vasilii Sergeyevich Besedin, MIC P&I, LLC, Intermodal Maldives, or JSC Smartavia Airlines by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of section 766.24(e) of the EAR, Oleg Sergeyevich Patsulya, Vasilii Sergeyevich Besedin, MIC P&I, LLC, Intermodal Maldives, and JSC Smartavia Airlines may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Respondents Oleg Sergeyevich Patsulya, Vasilii Sergeyevich Besedin, MIC P&I, LLC, Intermodal Maldives, and JSC Smartavia Airlines may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on each denied person and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–10750 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–146]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, In Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain freight rail couplers and parts thereof (freight rail couplers) from the People's Republic of China (China) during the period of investigation January 1, 2021, through December 31, 2021.

DATES: Applicable May 19, 2023.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Paul Gill, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–5673, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2023, Commerce published the *Preliminary Determination* of this investigation in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Determination.* In March 2023, we received comments from Strato Inc. (Strato) and Wabtec Corporation (Wabtec), U.S. importers of freight rail couplers from China.[2] On

[1] *See Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination,* 88 FR 13425 (March 3, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Strato's Letter, ''Strato Administrative Case Brief,'' date March 23, 2023; and Wabtec's Letter, ''Case Brief for Final Negative Countervailing Duty Determination and Final Negative Critical

April 6, 2023, we received rebuttal comments from the Coalition of Freight Coupler Producers (the petitioner).[3] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2021, through December 31, 2021.

Scope of the Investigation

The products covered by this investigation are freight rail couplers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation and the concurrent less-than-fair value investigations of freight rail couplers from China and Mexico, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.[5] We received comments from interested parties on the Preliminary Scope Memorandum, which we address in the Final Scope Memorandum.[6] As a result of these comments, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination. See* Appendix I.

Final Affirmative Determination of Critical Circumstances, In Part

In the *Preliminary Determination,* Commerce preliminarily determined, pursuant to section 703(e)(c)(1) of the Tariff Act of 1930, as amended (the Act), that critical circumstances exist for Chongqing Tongyao Transportation Equipment Co. (Chongqing Tongyao), Qingdao Sanheshan Precision Casting Co., Ltd. (Qingdao Sanheshan), the non-responsive companies,[7] and all other producers and/or exporters.[8] For this final determination, we continue to find that critical circumstances exist for Chongqing Tongyao, Qingdao Sanheshan, and the non-responsive companies, in accordance with section 705(a)(2) of the Act. However, for all other producers and/or exporters, we now find that we are unable to make a determination of whether there were massive imports of the subject merchandise over a relatively short period. Therefore, we do not find that critical circumstances exist with respect to all other producers and/or exporters. For the analysis of critical circumstances for the final determination, *see* Issues and Decision Memorandum at Comment 1.

Analysis of Comments Received

The issues raised in comments that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from interested parties, we made certain changes to our preliminary critical circumstances determination, as noted above. For a discussion of these changes, *see* the Issues and Decision Memorandum. However, as no interested party submitted comments on the subsidy rates selected in the *Preliminary Determination,* we made no changes to the subsidy rates assigned to Chongqing Tongyao, Qingdao Sanheshan, and the non-responsive companies.

Analysis of Subsidy Programs—Adverse Facts Available (AFA)

For the purposes of this final determination, Commerce relied solely on facts available pursuant to section 776 of the Act, because neither the Government of China nor the mandatory respondents, Chongqing Tongyao and Qingdao Sanheshan, participated in this investigation. Furthermore, as stated in our *Preliminary Determination,* the non-responsive companies also withheld necessary information that Commerce requested from them, failed to provide information within the deadlines established, and significantly impeded this proceeding by failing to respond to Commerce's quantity and value questionnaire.[9] Therefore, because the mandatory respondents, the non-responsive companies, and the Government of China did not cooperate to the best of their abilities in responding to our requests for information in this investigation, we drew adverse inferences in selecting from among the facts otherwise available, in accordance with sections 776(a)–(b) of the Act. We received no comments from interested parties regarding our application of AFA to determine the countervailability of, and rates for, the subsidy programs at issue in this investigation. Consistent with the *Preliminary Determination,* we continue to apply AFA to determine the appropriate subsidy rates for this investigation. A detailed discussion of our application of AFA is provided in the *Preliminary Determination.*[10]

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the selection of the all-others rate on the countervailable subsidy rate established for the mandatory respondents, in accordance with 703(d) of the Act.[11] Consistent with section 705(c)(5)(A)(ii) of the Act, we made no changes to the selection of the all-others rate for the final determination.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Circumstances Determination,'' dated March 23, 2023.

[3] *See* Petitioner's Letter, ''Petitioner's Rebuttal Brief,'' dated April 6, 2023.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated March 28, 2023 (Preliminary Scope Memorandum).

[6] *See* Memorandum, ''Final Scope Decision Memorandum,'' dated concurrently with this notice (Final Scope Memorandum).

[7] The non-responsive companies are: (1) Chongqing Changzheng Heavy Industry Co., Ltd.; (2) CRRC Qiqihar Co., Ltd.; (3) NanJing Zhongsheng Rolling Stock Components Co. Ltd.; (4) Ningbo Minghui Metal Technology Co., Ltd.; (5) Qingdao Lianshan Casting Co., Ltd.; (6) Shaanxi Haiduo Railway Technology Development Co., Ltd.; and (7) Shanghai Voith Xiagujin Chuang Coupler Technology Co., Ltd.

[8] *See Preliminary Determination,* 88 FR at 13426.

[9] *See Preliminary Determination* PDM at 7.

[10] *See Preliminary Determination* PDM at 4–14.

[11] *See Preliminary Determination,* 88 FR at 13426.

Company	Subsidy Rate (percent *ad valorem*)
Chongqing Changzheng Heavy Industry Co., Ltd	265.99
Chongqing Tongyao Transportation Equipment Co	265.99
CRRC Qiqihar Co., Ltd	265.99
NanJing Zhongsheng Rolling Stock Components Co. Ltd	265.99
Ningbo Minghui Metal Technology Co., Ltd	265.99
Qingdao Lianshan Casting Co., Ltd	265.99
Qingdao Sanheshan Precision Casting Co., Ltd	265.99
Shaanxi Haiduo Railway Technology Development Co., Ltd	265.99
Shanghai Voith Xiagujin Chuang Coupler Technology Co., Ltd	265.99
All Others	265.99

Continuation of Suspension of Liquidation

In accordance with section 705(c)(4)(A) of the Act, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise, as described in Appendix I of this notice, for Chongqing Tongyao, Qingdao Sanheshan, and the non-responsive companies, entered, or withdrawn from warehouse, for consumption on or after December 3, 2022, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. However, for all other producers and/or exporters, Commerce intends to instruct CBP to continue to suspend liquidation of entries of subject merchandise, as described in Appendix I of this notice, entered, or withdrawn from warehouse, for consumption on or after March 3, 2023, which is the date of publication of the *Preliminary Determination* in the **Federal Register**, at the all-others rate indicated above. These suspension of liquidation instructions will remain in effect until further notice.

Because we now find that critical circumstances do not exist for all other producers and/or exporters, we will direct CBP to terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required prior to March 3, 2022, the date of publication of the *Preliminary Determination* in the **Federal Register**, consistent with section 705(c)(3) of the Act.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we intend to issue a countervailing duty order and continue to require a case deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with 706(a) of the Act. If the ITC issues a final affirmative injury determination but a final negative determination of critical circumstances, we will instruct CBP to liquidate entries prior to the date of publication of the *Preliminary Determination* without regard to duties, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we intend to notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of freight rail couplers from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of freight rail couplers from China no later than 45 days after our final determination.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded or canceled, as Commerce determines to be appropriate. If the ITC determines that such injury does exist, Commerce intends to issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: May 15, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain freight railcar couplers (also known as ''fits'' or ''assemblies'') and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigation include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the investigation when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' and/or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.50. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Final Critical Circumstances Determination
IV. Analysis of Comments
 Comment 1: Whether Commerce Should Reverse its Preliminary Affirmative Critical Circumstances Determinations
 Comment 2: Whether Commerce Should Terminate the Investigation
V. Recommendation

[FR Doc. 2023–10779 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843, A–570–901]

Certain Lined Paper Products From India and the People's Republic of China: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain lined paper products from India and the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable May 19, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2023, Commerce published the notice of initiation of the sunset reviews of the *Orders* on certain lined paper products from China and India,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 15, 2023, Commerce received a notice of intent to participate from the domestic interested party for both of the *Orders* in accordance with 19 CFR 351.218(d)(1)(i).[3] The domestic interested party claimed domestic interested party status under section 771(9)(C) of the Act, as each member of the association is a manufacturer of the domestic like product in the United States.[4] On March 2, 2023, the domestic interested party filed timely substantive responses within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive a substantive response from any other interested parties with respect to the *Orders* covered by these sunset reviews, nor was a hearing requested. On March 23, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting expedited (120-day) sunset reviews of these *Orders*.

Scope of the Orders

The product covered by these *Orders* is certain lined paper products from China and India. For a full description of the scope, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if these *Orders* were revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx.* A list of the issues

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 6700 (February 1, 2023).

[3] The domestic interested party is the Association of American School Paper Suppliers (AASPS). AASPS consists of the following members: ACCO Brands USA LLC, Norcom Inc., and Top Flight Inc. The members of AASPS are domestic producers of lined paper products. *See* Domestic Interested Party's Letters, ''Certain Lined Paper Products from The People's Republic of China: Notice of Intent to Participate in Sunset Review,'' dated February 15, 2023 (NOI China); and ''Certain Lined Paper Products from India: Notice of Intent to Participate in Sunset Review,'' dated February 15, 2023 (NOI India).

[4] *See* NOI China at 2; *see also* NOI India at 2.

[5] *See* Domestic Interested Party's Letters, ''Certain Lined Paper Products from China: Substantive Response to Notice of Initiation,'' dated March 2, 2023 (Substantive Response China); and ''Certain Lined Paper Products from India: Substantive Response to Notice of Initiation,'' dated March 2, 2023 (Substantive Response India).

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2023,'' dated March 23, 2023.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Third Expedited Sunset Reviews: Certain Lined Paper Products from India and the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

discussed in the decision memorandum is attached as an appendix to this notice.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins of up to 23.17 percent for India and up to 258.21 percent for China.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: May 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. History of the *Orders*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2023–10707 Filed 5–18–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–914, A–557–824, A–549–846, A–583–871, A–552–835]

Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 15, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew Huston (India), Samuel Frost (Malaysia), Joy Zhang (Taiwan), Fred Baker (Thailand), or Whitley Herndon (the Socialist Republic of Vietnam (Vietnam)); AD/CVD Operations, Offices VII, V, VI, and III, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8180, (202) 482–6274, (202) 482–4261, (202) 482–2924, or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 25, 2023, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of boltless steel shelving units prepackaged for sale (boltless steel shelving) from India, Malaysia, Taiwan, Thailand, and Vietnam filed in proper form on behalf of Edsal Manufacturing Co., Inc. (the petitioner), a domestic producer of boltless steel shelving.[1]

On April 27 and 28 and May 8 and 10, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[2] The petitioner filed timely responses to these requests on May 1, 3, 8, and 10, 2023.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of boltless steel shelving from India, Malaysia, Taiwan, Thailand, and Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the boltless steel shelving industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the

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[1] *See* Petitioner's Letter, ''Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and Vietnam—Petition for the Imposition of Antidumping Duties,'' dated April 25, 2023 (Petitions).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam: Supplemental Questions,'' dated April 27, 2023 (General Issues Questionnaire); and Country-Specific-Questionnaires: India Supplemental, Malaysia Supplemental, Taiwan Supplemental, Thailand Supplemental, and Vietnam Supplemental, dated April 28, 2023; *see also* Country-Specific Memoranda: India Memorandum, Malaysia Memorandum, Taiwan Memorandum, Thailand Memorandum, and Vietnam Memorandum, dated May 5, 2023; Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Boltless Steel Shelving Units Prepackaged for Sale from Taiwan—Phone Call with Counsel to the Petitioner,'' dated May 8, 2023; and Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated May 10, 2023 (Scope Memorandum).

[3] *See* Petitioner's Letters, ''Boltless Steel Shelving from India, Malaysia, Taiwan, Thailand, and Vietnam—Petitioner's Supplement to Volume I Relating to Request for the Imposition of Antidumping Duties on Imports from India, Malaysia, Taiwan, Thailand, and Vietnam,'' dated May 1, 2023 (General Issues Supplement); ''Petitioner's Response to the Department's Supplemental Questionnaire Regarding Volume II of the Petition for the Imposition of Antidumping Duties on Imports from India,'' dated May 3, 2023; ''Petitioner's Response to the Department's Supplemental Questionnaire Regarding Volume III of the Petition for the Imposition of Antidumping Duties on Imports from Malaysia,'' dated May 3, 2023; ''Petitioner's Response to the Department's Supplemental Questionnaire Regarding Volume IV of the Petition for the Imposition of Antidumping Duties on Imports from Taiwan,'' dated May 3, 2023; ''Petitioner's Response to the Department's Supplemental Questionnaire Regarding Volume V of the Petition for the Imposition of Antidumping Duties on Imports from Thailand,'' dated May 3, 2023; ''Petitioner's Response to the Department's Supplemental Questionnaire Regarding Volume VI of the Petition for the Imposition of Antidumping Duties on Imports from Vietnam,'' dated May 3, 2023; ''Petitioner's Response to the Department's Second Supplemental Questionnaire Regarding Volume II of the Petition for the Imposition of Antidumping Duties on Imports from India,'' dated May 8, 2023; ''Petitioner's Response to the Department's Second Supplemental Questionnaire Regarding Volume III of the Petition for the Imposition of Antidumping Duties on Imports from Malaysia,'' dated May 8, 2023; ''Petitioner's Response to the Department's Second Supplemental Questionnaire Regarding Volume IV of the Petition for the Imposition of Antidumping Duties on Imports from Taiwan,'' dated May 8, 2023; ''Petitioner's Response to the Department's Second Supplemental Questionnaire Regarding Volume V of the Petition for the Imposition of Antidumping Duties on Imports from Thailand,'' dated May 8, 2023; ''Petitioner's Response to the Department's Second Supplemental Questionnaire Regarding Volume VI of the Petition for the Imposition of Antidumping Duties on Imports from Vietnam,'' dated May 8, 2023; and ''Petitioner's 2nd Supplement to Volume I Relating to Request for the Imposition of Antidumping Duties on Imports from India, Malaysia, Taiwan, Thailand, and Vietnam,'' dated May 10, 2023 (Scope Supplement).

domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[4]

Periods of Investigation

Because the Petitions were filed on April 25, 2023, the period of investigation (POI) for the India, Malaysia, Thailand, and Taiwan AD investigations is April 1, 2022, through March 31, 2023, pursuant to 19 CFR 351.204(b)(1). Because Vietnam is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the Vietnam AD investigation is October 1, 2022, through March 31, 2023.

Scope of the Investigations

The product covered by these investigations is boltless steel shelving from India, Malaysia, Taiwan, Thailand, and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On April 27 and May 10, 2023, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[5] On May 1 and 10, 2023, the petitioner provided clarifications and revised the scope.[6] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[7] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[8] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on June 5, 2023, which is the next business day after 20 calendar days from the signature date of this notice.[9] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 15, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of these investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically-filed document must be received successfully in its entirety by the time and date on which it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of boltless steel shelving to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or costs of production (COP) accurately, as well as to develop appropriate product comparison criteria where appropriate.

Subsequent to the publication of this notice, Commerce intends to release a proposed list of physical characteristics and product-comparison criteria, and interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe boltless steel shelving, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on June 5, 2023, which is the next business day after 20 calendar days from the signature date of this notice.[11] Any rebuttal comments must be filed by 5:00 p.m. ET on June 15, 2023, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition

[4] *See infra,* section titled "Determination of Industry Support for the Petitions."

[5] *See* General Issues Questionnaire; *see also* Scope Memorandum.

[6] *See* General Issues Supplement at 3–7 and Attachments 2 and 3; *see also* Scope Supplement.

[7] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[8] *See* 19 CFR 351.102(b)(21) (defining "factual information").

[9] The deadline for comments falls on Sunday, June 4, 2023. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, June 5, 2023). *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005) (*Next Business Day Rule*).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[11] *See Next Business Day Rule.*

does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the Act directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[14] Based on our analysis of the information submitted on the record, we have determined that boltless steel shelving, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of boltless steel shelving in 2022 and compared this to the total volume of boltless steel shelving produced by the U.S. industry in 2022.[16] We relied on data provided by the petitioner for purposes of measuring industry support.[17]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[22]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

With regard to India, while the allegedly dumped imports from India do not exceed the statutory requirements for negligibility, the petitioner alleges and provides supporting evidence that: (1) there is a reasonable indication that the data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold;[24] and (2) there is the potential that imports from India will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination.[25] The petitioner's arguments regarding the limitations of publicly available import data and the reasonable indication that the data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold are consistent with the SAA. Furthermore, the petitioner's arguments regarding the potential for imports from India to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

The petitioner contends that the industry's injured condition is illustrated by a significant and

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Petitions at Volume I (pages 15–17 and Exhibit GEN–10); *see also* General Issues Supplement at 3 and Attachment 1.

[15] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see,* individually, AD Investigation Initiation Checklists, ''Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam,'' dated concurrently with this notice (Country-Specific AD Initiation Checklists), at Attachment II (Analysis of Industry Support for the Antidumping Duty Petitions Covering Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam).

[16] *See* Petitions at Volume I (page 3 and Exhibits GEN–4 and GEN–5).

[17] *Id.* at Volume I (pages 2–3 and Exhibits GEN–1 through GEN–5). For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[18] *See* Petitions at Volume I (pages 2–3 and Exhibits GEN–1 through GEN–5). For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[19] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[20] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[21] *Id.*

[22] *Id.*

[23] *See* Petitions at Volume I (pages 17–20 and Exhibits GEN–1 and GEN–11).

[24] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994) (SAA), at 857; *see also* Petitions at Volume I (pages 12–13, 18–20, and Exhibits GEN–1 and GEN–11).

[25] *See* section 771(24)(A)(iv) of the Act; *see also* Petitions at Volume I (pages 18–20 and Exhibits GEN–1 and GEN–11).

increasing volume of subject imports; declining market share; underselling and price depression and/or suppression; lost sales and revenues; decline in U.S. shipments, production, and capacity utilization; decline in employment variables; and adverse impact on financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[27]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate these LTFV investigations on imports of boltless steel shelving from India, Malaysia, Taiwan, Thailand, and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For India, Malaysia, Thailand, Taiwan, and Vietnam, the petitioner based export price (EP) on pricing information for boltless steel shelving produced in, and exported from, the respective countries and sold or offered for sale in the United States.[28] The petitioner made certain adjustments for movement and other expenses for the U.S. price based on the pricing information to calculate a net U.S. price, where applicable.[29]

Normal Value [30]

The petitioner based NV on home market pricing information obtained through market research for boltless steel shelving produced in and sold, or offered for sale, in India, Malaysia, Thailand, and Taiwan during the applicable time period.[31]

Commerce considers Vietnam to be an NME country.[32] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Vietnam as an NME country for purposes of the initiation of this investigation. Accordingly, NV in Vietnam is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioner claims that Indonesia is an appropriate surrogate country for Vietnam because Indonesia is a market economy country that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise. The petitioner provided publicly available information from Indonesia to value all FOPs. Based on the information provided by the petitioner, we determine that it is appropriate to use Indonesia as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of boltless steel shelving from India, Malaysia, Taiwan, Thailand, and Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for boltless steel shelving from each of the countries covered by this initiation are as follows: (1) India—175.31 percent; (2) Malaysia—35.45 to 81.12 percent; (3) Taiwan—78.12 percent; (4) Thailand—176.62 to 187.03 percent; and (5) Vietnam—92.60 to 224.94 percent.[33]

Initiation of LTFV Investigations

Based upon our examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating these LTFV investigations to determine whether imports of boltless steel shelving from India, Malaysia, Taiwan, Thailand, and Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

India, Malaysia, Taiwan, and Thailand

In the Petitions, the petitioner identified three companies in India, three companies in Malaysia, one company in Taiwan, and seven companies in Thailand as producers/exporters of boltless steel shelving.[34] Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of exporters or producers is large such that Commerce cannot individually examine each company based on its resources, where appropriate, Commerce intends to select mandatory respondents in these cases based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix to this notice.

On May 8, 2023, Commerce released CBP data on U.S. imports of boltless steel shelving from Taiwan, under administrative protective order (APO) to all parties with access to information protected by APO.[35] On May 10, 2023, Commerce released CBP data on imports of boltless steel shelving from India, Malaysia, and Thailand under APO to all parties with access to information protected by APO.[36] When it released these data, Commerce indicated that interested parties wishing to comment on CBP data must do so within three business days of the publication date of

[26] *See* Petitions at Volume I (pages 14, 17–37 and Exhibits GEN–1, GEN–8, and GEN–10 through GEN–16); *see also* General Issues Supplement at 7–8 and Attachments 4–6.

[27] *See* Country-Specific AD Initiation Checklists at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam).

[28] *See* Country-Specific AD Initiation Checklists.

[29] *Id.*

[30] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[31] *See* Country-Specific AD Initiation Checklist.

[32] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017,* 84 FR 18007 (April 29, 2019).

[33] *Id.*

[34] *See* Petitions at Volume I (page 14 and Exhibit GEN–7).

[35] *See* Memorandum, ''Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from Taiwan: Release of Customs Data from U.S. Customs and Border Protection,'' dated May 8, 2023.

[36] *See* Memoranda, ''Boltless Steel Shelving Units Prepackaged for Sale from India: Release of Data from U.S. Customs and Border Protection,'' dated May 10, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Boltless Steel Shelving Units Prepackaged for Sale from Malaysia: Release of U.S. Customs and Border Protection Data,'' dated May 10, 2023; and ''Less-Than-Fair-Value Petition of Boltless Steel Shelving Units Prepackaged for Sale from Thailand: Release of U.S. Customs and Border Protection Data,'' dated May 10, 2023.

the notice of initiation of these investigations. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://access.trade.gov/Resources/Administrative_Protective_Order.aspx.*

Vietnam

In the Petition, the petitioner named three companies as producers/exporters of boltless steel shelving in Vietnam.[37] In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large, and it cannot individually examine each company based upon its resources. Therefore, considering the number of Vietnamese producers and exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Given that there are three producers and exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Enforcement and Compliance's website at *https://www.trade.gov/ec-adcvd-case-announcements.* Producers/exporters of boltless steel shelving from Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement and Compliance's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Vietnamese producers/exporters no later than 5:00 p.m. ET on May 30, 2023, which is two weeks from the signature date of this notice.[38] All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate rate application.[39] The specific requirements for submitting a separate rate application in a Vietnam investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice.[40] Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from Vietnam submit a response to both the Q&V questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. Policy Bulletin 05.1 states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[41]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of India, Malaysia, Thailand, Taiwan, and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of boltless steel shelving from India, Malaysia, Taiwan, Thailand, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[42] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[43] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires;

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[37] *See* Petitions at Volume I (Exhibit GEN–4).

[38] Because the current deadline falls on a federal holiday (*i.e.,* May 29, 2023), the deadline is the next business day (*i.e.,* May 30, 2023). *See Next Business Day Rule.*

[39] *See* Policy Bulletin 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries'' (April 5, 2005) (Policy Bulletin 05.1), available at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

[40] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[41] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[42] *See* section 733(a) of the Act.

[43] *Id.*

(ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [44] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[45] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's response to section D of Commerce's initial AD questionnaire.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning factual information prior to submitting factual information in these investigations.[46]

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[47] Parties must use the certification formats provided in 19 CFR 351.303(g).[48] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance as discussed). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[49]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 15, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigations

The scope of these investigations covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by these investigations may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post,

[44] *See* 19 CFR 351.301(b).

[45] *See* 19 CFR 351.301(b)(2).

[46] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[47] *See* section 782(b) of the Act.

[48] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[49] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- Wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- Wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- Bulk-packed parts or components of boltless steel shelving units; and
- Made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2023–10778 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Stilbenic Optical Brightening Agents From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Teh Fong Min International Co., Ltd. (TFM), the sole producer and/or exporter subject to this administrative review, made sales of stilbenic optical brightening agents (OBAs) at less than normal value during the period of review (POR) May 1, 2021, through April 30, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable May 19, 2023.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2012, we published in the **Federal Register** an antidumping duty order on OBAs from Taiwan.[1] On May 2, 2022, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On July 14, 2022, based on timely requests for an administrative review, Commerce initiated the administrative review of the *Order* with respect to TFM.[3] On January 12, 2023, we extended the due date for the preliminary results of this review by 120 days to no later than May 24, 2023.[4]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 87 FR 25619 (May 2, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 42144, 42149 (July 14, 2022); *see also* Archroma U.S., Inc.'s Letter, ''Archroma U.S., Inc.'s Request for Administrative Review of Certain Stilbenic Optical Brightening Agents from Taiwan, Case No. A–583–848, POR 5/1/21–4/30/22,'' dated May 31, 2022; and TFM's Letter, ''Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan,'' dated May 29, 2022.

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2021–2022,'' dated January 12, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2021–2022: Certain Stilbenic Optical Brightening Agents from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order

The products covered by the *Order* are OBAs. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer and/or exporter	Weighted-average dumping margin (percent)
Teh Fong Min International Co., Ltd	3.89

Disclosure and Public Comment

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days after public announcement of the preliminary results.[6]

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[7] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d)(1).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303 (for general filing requirements).

containing business proprietary information, until further notice.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. An electronically filed hearing request must be received successfully in its entirety via ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If the weighted-average dumping margin for TFM is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[11] If TFM's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[12]

For entries of subject merchandise during the POR produced by TFM for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate (*i.e.,* 6.19 percent) [13] if there is no rate for the intermediate company(ies) involved in the transaction.[14]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of OBAs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for TFM will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will be the all-others rate established in the less-than-fair-value investigation for this proceeding, *i.e.,* 6.19 percent.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: May 15, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2023–10780 Filed 5–18–23; 8:45 am]

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[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[12] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[13] *See Order,* 77 FR at 27420.

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order,* 77 FR at 27420.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Zhangzhou XMB Home Technology Co., Ltd (Zhangzhou XMB) is the successor-in-interest to Zhangzhou XYM Furniture Product Co., Ltd. (Zhangzhou XYM) for purposes of the antidumping duty (AD) order on wooden bedroom furniture (WBF) from the People's Republic of China (China). Accordingly, subject merchandise exported by Golden Well International (HK), Ltd. (Golden Well) and produced by Zhangzhou XMB should be assigned the same AD cash deposit rate as the AD cash deposit rate established for subject merchandise exported by Golden Well and produced by Zhangzhou XYM.

DATES: Applicable May 19, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2022, Golden Well and Zhangzhou XMB notified Commerce that Zhangzhou XYM changed its name to Zhangzhou XMB and requested that Commerce conduct a changed circumstances review (CCR) to determine that Zhangzhou XMB is the successor-in-interest to Zhangzhou XYM.[1] On November 22, 2022, Commerce initiated this CCR[2] of the AD order on WBF from China.[3] We received no comments from interested parties subsequent to initiation.

Scope of the Order

The merchandise covered by the *Order* is WBF. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[4]

Legal Framework

In determining whether one company is the successor-in-interest to another company as part of an AD proceeding, Commerce examines several factors including, but not limited to: (1) management and ownership; (2) production facilities; (3) supplier relationships; and (4) customer base.[5] Although no single, or combination of factors will necessarily provide a dispositive indication of successorship, generally, Commerce will consider one company to be the successor-in-interest to another company if its operations are not materially dissimilar to those of the other company.[6] Thus, if the totality of the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will find the new company to be the successor-in-interest to the prior company.[7]

Preliminary Results of Review

We preliminarily determine that Zhangzhou XMB is the successor-in-interest to Zhangzhou XYM for purposes of the *Order* because Zhangzhou XMB's management and ownership, production facilities, supplier relationships, and customer base are the same, or substantially the same, as those of Zhangzhou XYM. For a complete successor-in-interest analysis, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Should our determination remain unchanged in the final results of this CCR, we will instruct U.S. Customs and Border Protection to require, effective as of the date of publication of the notice of the final results of this CCR in the **Federal Register***,* an AD cash deposit of zero percent for subject merchandise exported by Golden Well and produced by Zhangzhou XMB. This is the AD cash deposit rate currently in effect for subject merchandise exported by Golden Well and produced by Zhangzhou XYM.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the due date for case briefs, in accordance with 19 CFR 351.309(d).[8] Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9]

All comments must be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must be served on interested parties.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals associated with the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues the party intends to discuss at the hearing. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled hearing date.

Final Results of Review

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review was initiated.

Notification to Interested Parties

The preliminary results of this CCR and this notice are published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 19 CFR 351.221(b)(4) and (c)(3).

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[1] *See* Golden Well and Zhangzhou XMB's Letter, ''Wooden Bedroom Furniture from the People's Republic of China; Request for Changed Circumstances Review (A–570–890),'' dated October 5, 2022.

[2] *See Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review,* 87 FR 71300 (November 22, 2022).

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (*Order*).

[4] *See* Memorandum, ''Wooden Bedroom Furniture from the People's Republic of China: Decision Memorandum for the Preliminary Results of the Changed Circumstances Review,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See, e.g., Stainless Steel Bar from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 22622 (April 23, 2014), and accompanying Preliminary Decision Memorandum at 2–3, unchanged in *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 63081 (October 22, 2014).

[6] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil,* 71 FR 2183 (January 13, 2006).

[7] *See, e.g., Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 86 FR 24845 (May 10, 2021).

[8] Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for the filing of rebuttal briefs.

[9] *See* 19 CFR 351.30(c)(2) and (d)(2).

[10] *See generally* 19 CFR 351.303.

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: May 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Successor-in-Interest Determination
V. Recommendation

[FR Doc. 2023–10725 Filed 5–18–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD026]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Mariana Archipelago Fishery Ecosystem Plan (FEP) Commonwealth of the Northern Mariana Islands Advisory Panel (AP), Hawaii Archipelago FEP AP, and the Mariana Archipelago FEP Guam AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between June 2 and June 9, 2023. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Mariana Archipelago Fishery Ecosystem Plan (FEP) Commonwealth of the Northern Mariana Islands Advisory Panel (AP), Mariana Archipelago FEP Guam AP and the Hawaii Archipelago FEP AP meetings will be held in a hybrid format with in-person and remote participation (Webex) options available for the members and the public. In-person attendance for Mariana Archipelago CNMI AP members will be hosted at BRI Building Suite 205, Kopa Di Oru St., Garapan, Saipan, 96950. In person attendance for Hawaii Archipelago FEP AP members will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. In-person attendance for Mariana Archipelago FEP Guam AP members will be hosted at Cliff Pointe, 304 W O'Brien Drive, Hagatña, GU 96910. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Mariana Archipelago FEP CNMI AP will meet on Saturday, June 3, from 10 a.m. to 1 p.m., the Hawaii Archipelago AP will meet on Friday, June 9, from 9 a.m. to 4 p.m., and the Mariana Archipelago FEP Guam AP will meet on Thursday, June 8, 2023, from 1 p.m. to 4 p.m. All times listed are local island times.

Public Comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Mariana Archipelago FEP CNMI AP Meeting

Saturday, June 3, 2023, From 10 a.m. to 1 p.m. (Chamorro Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meeting
3. Commonwealth of the Northern Mariana Islands (CNMI) AP Project and Activities Update
4. Feedback From the Fleet
   A. Second Quarter Fishermen Observations in the Marianas
   B. CNMI Fishery Issues and Priorities
5. Council Issues
   A. Options for CNMI Bottomfish Annual Catch Limits for 2024–25
   B. 2022 Annual Stock Assessment and Fishery Evaluation (SAFE) Report—CNMI Module
6. Research Priorities
   A. Magnuson-Stevens Act (MSA) Five-Year Research Priorities Review
   B. Cooperative Research
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for the Hawaii Archipelago AP meeting

Friday, June 9, 2023, From 9 a.m. to 4 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meeting
3. Hawaii AP Project and Activities Update (AP Plans)
4. Feedback From the Fleet
   A. Second Quarter Hawaii Fishermen Observations
   B. Hawaii AP Fisheries Issues and Priorities
5. Hawaii Fishery Issues and Activities
   A. Hawaii Deep-set Longline Fishery Final Biological Opinions
   B. False Killer Whale Take Reduction Team Meeting Report
   C. 2022 Hawaii Annual SAFE Report
6. Council Fishery Issues and Activities
   A. Specifying Annual Catch Limits for Main Hawaiian Island (MHI) Kona Crab 2024–26
   B. MHI Kona Crab Status Determination Criteria
   C. Options for Revising Uku Essential Fish Habitat
7. Research Priorities
   A. MSA Five-Year Research Priorities Review
   B. Cooperative Research
8. Other Business
9. Public Comment
10. Discussion and Recommendations

Schedule and Agenda for the Mariana Archipelago FEP Guam AP Meeting

Thursday, June 8, 2023, From 1 p.m. to 4 p.m. (Chamorro Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meeting
3. Guam AP Project and Activities Update (AP Plans)
   A. Military Mitigation Plan
4. Feedback From the Fleet
   A. Second Quarter Fishermen Observations in the Marianas
   B. Marianas Archipelago Fishery Issues and Priorities
5. Council Issues
   A. 2022 Annual SAFE Report—Guam Module
6. Research Priorities
   A. MSA Five-Year Research Priorities Review
   B. Cooperative Research
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 16, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10790 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Conduct Scoping and To Prepare a Draft Environmental Impact Statement for the Proposed Lake Erie Quadrangle National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of intent to hold public scoping meetings and prepare a draft environmental impact statement; request for comments.

SUMMARY: In accordance with the National Marine Sanctuaries Act (NMSA) and National Environmental Policy Act (NEPA), and based on the area's qualities and boundaries described in the community-based nomination on December 31, 2015 (*https://nominate.noaa.gov/*), NOAA is initiating a scoping process to consider designating a national marine sanctuary in the eastern Lake Erie adjacent to Pennsylvania. The nomination provides a description of the cultural and historical resources in the region, the potential benefits of a national marine sanctuary designation, recommendations for management of the sanctuary, and a proposed sanctuary boundary. As a first step in this scoping process, NOAA invites comments on the factors that will contribute to its determination of whether and how to designate the area as a national marine sanctuary. The results of this scoping process will inform NOAA's next steps in the designation process, which would include the preparation and release of draft designation documents, as well as the formulation of action alternatives for the draft environmental impact statement (DEIS). This scoping process will also inform the initiation of consultations with Indigenous Nations and Tribes, Federal, State, and local agencies, and other interested parties, as appropriate. In support of the scoping process, the nomination package and additional information regarding the qualities of the Lake Erie Quadrangle area can be found at *https://sanctuaries.noaa.gov/lake-erie.*

DATES:

Comments due: July 18, 2023.

Public Meetings: NOAA will host three public meetings during the scoping process, two virtual and one in-person. The in-person scoping meeting will occur at the following day and time:

• Erie, Pennsylvania.

Date: Wednesday, June 21, 2023.

Location: Erie County Public Library—Blasco.

Address: H.O. Hirt Auditorium, 160 E Front St., Erie, PA 16507.

Time: 6:30 p.m.–8:00 p.m. Eastern Time.

The virtual public scoping meetings will occur at the following dates and times:

• Tuesday, June 27, 2023, 2:00 p.m.–3:30 p.m. Eastern Time.

• Wednesday, June 28, 2023, 6:30 p.m.–8:00 p.m. Eastern Time.

Please check *https://sanctuaries.noaa.gov/lake-erie* for meeting links and the most up-to-date information, should plans for these public meetings change. NOAA may end a virtual or in-person meeting before the time noted above if all participants have concluded their oral comments.

ADDRESSES: You may submit comments, identified by docket number NOAA–NOS–2023–0039, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and enter ''NOAA–NOS–2023–0039'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comment.

• *Mail:* Send any hard copy public comments by mail to: Ellen Brody, NOAA Office of National Marine Sanctuaries, 4840 South State Rd., Ann Arbor, MI 48108. Note the docket number at the top of the comment.

• *Public Scoping Meetings:* Provide oral comments during public scoping meetings, as described under **DATES**. Webinar registration details and additional information about how to participate in these virtual and in-person public scoping meetings is available at *www.sanctuaries.noaa.gov/lake-erie.*

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 NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personally identifiable information (for example, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Comments that are not responsive or contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT:
Ellen Brody, (734) 741–2270, *ellen.brody@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Area Under Consideration

The National Marine Sanctuaries Act, as amended (NMSA), 16 U.S.C. 1431 *et seq.,* authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. A primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to ONMS.

In December 2015, Erie County, Pennsylvania, submitted a nomination to NOAA through the Sanctuary Nomination Process (79 FR 33851), proposing consideration of the Lake Erie Quadrangle as a national marine sanctuary to conserve its nationally significant underwater cultural and historical resources and to expand upon existing local and state efforts to study, interpret, and promote them. Along with support from the Governor of Pennsylvania, the nomination was endorsed by a diverse coalition of organizations and individuals at local, State, and national levels including elected officials, agencies, businesses, recreational users, local charters, academic organizations, tourism organizations, non-profit organizations, economic development organizations, historical societies, and education groups. In February 2016, NOAA added the Lake Erie Quadrangle proposal to its inventory of successful nominations that are eligible for designation, and extended it on the inventory in March 2021 after a required five-year review of the nomination (87 FR 11049).

NOAA is initiating the process to designate this area as a national marine sanctuary based primarily on the information included in the nomination. NOAA's goal in considering the designation of the Lake Erie Quadrangle National Marine Sanctuary (LEQNMS) in Lake Erie is to recognize the national significance of the area's historical, archaeological, and cultural resources and to manage the area as part of the National Marine Sanctuary System. If

NOAA finalizes the designation, the agency would delineate the boundaries of the sanctuary; manage the area as a part of the National Marine Sanctuary System under NMSA; establish sanctuary regulations; and implement a management plan.

The area being considered for designation as a national marine sanctuary in Lake Erie includes approximately 740 square miles (1917 square kilometers) of lake waters and bottomlands. The area would be adjacent to approximately 75 miles (120 kilometers) of coastline bordering Erie County, Pennsylvania, that extends westward to the Ohio state line, northward to the international border with Ontario, Canada, and eastward to the New York State line. The nomination proposes to exclude the Erie Port from the sanctuary boundaries to ensure compatible use with shipping and other commercial activities.

This area represents a historically rich region where the long relationship between human activity and the maritime environment has created meaning and a sense of place, which is expressed and preserved in a wide variety of maritime cultural resources from sacred places and cultural practices to lighthouses and historic shipwrecks. Together, these tangible and intangible elements form a rich maritime cultural landscape. Lake Erie hosted one of the busiest waterways of the mid-19th century. Pennsylvania supported the Great Lakes' largest commercial fishing fleet during the 19th century, some of the earliest shipbuilding on the Great Lakes, and major naval yards during the War of 1812.

Nearly every type of vessel that operated on the Great Lakes during the historic period is represented in the area being considered for sanctuary designation. Based on historical records, 196 vessels may have sunk within the Pennsylvania waters of Lake Erie, and 35 of these shipwrecks have been identified. The known shipwrecks span from the 1838 steamboat *Chesapeake* to speedboats, tugs, barges, and workboats lost before 1940. The collection includes schooners, brigs, and barks; barges and schooner barges; dredges and sand suckers; fishing tugs and trawlers; and sidewheel steamboats and propellers. This area also includes the potential for submerged prehistoric sites and historic properties that may be of religious and cultural significance to Indigenous Nations and Tribes.

Designation of a national marine sanctuary under the NMSA would allow NOAA to complement the Commonwealth of Pennsylvania's efforts to preserve and interpret the area's marine resources, including its collection of nationally significant historic shipwrecks and other underwater cultural resources. NOAA could use its research and monitoring assets to further locate, document, and monitor the area's significant cultural resources, expand education and outreach to interpret sanctuary resources for the public, and promote the responsible use of sanctuary resources. Furthermore, a sanctuary has the potential to increase tourism and economic opportunities in local coastal communities.

NOAA plans to establish a pre-designation sanctuary advisory council to bring members of the local community together to provide advice to NOAA, to serve as a liaison with the nominating community, and to assist in guiding NOAA through the designation process. NOAA will publish additional information on the pre-designation Sanctuary Advisory Council at a later date.

II. Items of Particular Interest During the Public Scoping Process

While the public may comment on all matters viewed as relevant to the potential designation of a national marine sanctuary in Lake Erie, NOAA is requesting input on the following specific topics to help guide the scoping process:

- boundary alternatives for the proposed sanctuary;
- the location, nature, and value of the cultural and historical resources in the area under consideration;
- specific threats to these resources;
- information on the Indigenous heritage of the area;
- the potential socioeconomic, cultural, and biological impacts resulting from designation as a national marine sanctuary;
- the non-regulatory actions NOAA should prioritize within its draft management plan for the proposed sanctuary;
- the regulatory framework most appropriate for management of the proposed sanctuary;
- the benefits to the economy of the region, including promoting sustainable tourism and recreation; and
- a permanent name for the proposed sanctuary.

Comments may be submitted to NOAA by July 18, 2023 using the methods described in **ADDRESSES**. NOAA will host public scoping meetings during the public comment period, as described under **DATES**.

III. National Marine Sanctuary Designation Process

The national marine sanctuary designation process includes the following well-established and highly participatory stages:

1. Public Scoping—Collection and characterization of initial public comments on the proposed designation;
2. Preparation of Draft Documents—Preparation and release of draft designation documents, including: a DEIS, prepared pursuant to NEPA, that identifies boundary and/or regulatory alternatives; a draft management plan; and a notice of proposed rulemaking to define proposed sanctuary regulations. Draft documents would be used to initiate consultations with Indigenous Nations and Tribes, Federal, State, and local agencies, and other interested parties, as appropriate;
3. Public Comment on Draft Documents—Through public meetings and in writing, allow for public review and comment on a DEIS, draft management plan, and notice of proposed rulemaking;
4. Preparation of Final Documents—Preparation and release of a final environmental impact statement (FEIS); final management plan, including a response to public comments; and a final rule.
5. Review Period—The sanctuary designation and regulations would take effect after the end of a review period of forty-five days of a continuous session of Congress. During this same period, should the designation include State waters, the Governor of the State has the opportunity to concurrently review the terms of designation including boundaries within State waters.

IV. Development of a Draft Environmental Impact Statement

In accordance with the NMSA, NOAA must draft an environmental impact statement (EIS) pursuant to NEPA when designating a new national marine sanctuary. The input gathered during the public scoping process is fundamental to NOAA's development of a DEIS.

A. Purpose and Need for Sanctuary Designation

The NMSA directs NOAA to identify and designate as national marine sanctuaries areas of the marine and Great Lakes environments that are of special national significance, provide authority for comprehensive and coordinated conservation and management of these marine areas, and protect the resources of these areas. The purpose and need for the proposed action is to consider whether a sanctuary designation in the Lake Erie Quadrangle would fulfill the purposes and policies outlined in section 301(b) of the NMSA, 16 U.S.C. 1431(b), and meet the sanctuary designation standards in section 303 of the NMSA, 16 U.S.C. 1433.

B. Preliminary Description of Proposed Action and Alternatives

NOAA's proposed action is to consider designating the Lake Erie Quadrangle National Marine Sanctuary in accordance with the sanctuary designation process described in section 304 of the NMSA (16 U.S.C. 1434). Through the public scoping process and as part of the sanctuary designation process, NOAA will develop draft designation documents including a draft sanctuary management plan, proposed sanctuary regulations, and proposed terms of designation. The NEPA process for sanctuary designation will include preparation of a DEIS to consider alternatives and describe potential effects of the sanctuary designation on the human environment. A DEIS will evaluate a reasonable range of action alternatives that could include different options for management plan goals, sanctuary regulations, and potential boundaries. A DEIS will also consider a No Action Alternative, wherein NOAA would not designate a national marine sanctuary.

C. Summary of Expected Impacts of Sanctuary Designation

A DEIS will identify and describe the potential effects of the proposed action and reasonable alternatives on the human environment. Potential impacts may include, but are not limited to, impacts on the area's biological and physical resources, including habitats, plants, birds, fish, and special status species; underwater cultural and historical resources; and human uses and socioeconomics of the area. Based on a preliminary evaluation of the resources listed above, NOAA expects potential positive impacts to the environment from enhanced protection of the area's underwater cultural and historical resources; improved planning and coordination of research, monitoring, and management actions; reduced harmful human activities; and reduced threats and stressors to resources.

D. Schedule for the Decision-Making Process

NOAA expects to make a DEIS and other draft documents available to the public by winter 2024. NOAA expects to make a FEIS available to the public by winter 2025. A Record of Decision will be issued no sooner than 30 days after the FEIS is made available to the public, in accordance with 40 CFR 1506.11.

E. NEPA Lead and Cooperating Agency Roles

NOAA is the lead Federal agency for the NEPA process for the proposed action. NOAA may invite other Federal agencies, or State, Tribal, or local agencies of similar qualifications to become cooperating agencies in the preparation of the EIS for the proposed action. NEPA regulations specify that a cooperating agency means any Federal agency (and a Tribal, State, or local agency with agreement of the lead agency) that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) (40 CFR 1508.1(e)).

F. Anticipated Permits, Authorizations, and Consultations

Federal permits, authorizations, or consultations may be required for the proposed action, including consultation or review under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* National Historic Preservation Act (NHPA), 54 U.S.C. 300101 *et seq.;* Executive Order 13175 (*Consultation and Coordination With Indian Tribal Governments*); consistency review under the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.;* and possibly reviews under other laws and regulations determined to be applicable to the proposed action. To the fullest extent possible, NOAA will prepare a DEIS concurrently and integrate analyses required by other Federal environmental review requirements. A DEIS will list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposed action. 40 CFR 1502.24.

V. Consultation Under Section 106 of the National Historic Preservation Act and Executive Order 13175

This notice confirms that NOAA will coordinate its responsibilities under section 106 of the NHPA during the sanctuary designation process and is soliciting public and stakeholder input to meet section 106 compliance requirements. The NHPA section 106 consultation process specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(l)(1), historic properties include: ''any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization that meet the National Register criteria.''

This notice also confirms that, with respect to the proposed sanctuary designation process, NOAA will fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and NOAA's implementing policies and procedures. Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with Tribal officials in the development of Federal policies that have Tribal implications. NOAA implements Executive Order 13175 through NOAA Administrative Order 218–8 (Policy on Government-to-Government Consultation with Federally-Recognized Indian Tribes and Alaska Native Corporations), and the NOAA Tribal Consultation Handbook. Under these policies and procedures, NOAA offers government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have Tribal implications.

Authority: 16 U.S.C. 1431 *et seq.;* 42 U.S.C. 4321 *et seq.;* 40 CFR 1500–1508 (NEPA Implementing Regulations); NOAA Administrative Order 216–6A.

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–10644 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC982]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Coastal Pelagic Species Fishery; Applications for Exempted Fishing Permits; 2023–2024 Fishing Year

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

ACTION: Notice of receipt of application; request for comments.

SUMMARY: The Regional Administrator, West Coast Region, NMFS, has made a preliminary determination that two Exempted Fishing Permit (EFP) applications warrant further consideration. Both applications are from the California Wetfish Producers Association and request an exemption from the expected prohibition on primary directed fishing for Pacific sardine during the 2023–2024 fishing year to collect Pacific sardine as part of industry-based scientific research. NMFS requests public comment on the applications.

DATES: Comments must be received by June 20, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0069, by the following method:

- *Electronic Submissions:* Submit all public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2023–0069 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments. The EFP applications will be available under Supporting and Related Materials through the same link.

Instructions: Comments sent by any other method 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).

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 980–4066, *taylor.debevec@noaa.gov.*

SUPPLEMENTARY INFORMATION: This action is authorized by the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and regulations at 50 CFR 600.745, which allow NMFS Regional Administrators to authorize exempted fishing permits (EFPs) for fishing activities that would otherwise be prohibited.

At its April 2023 meeting, the Pacific Fishery Management Council (Council) recommended that NMFS approve two EFP applications for the 2023–2024 Pacific sardine fishing year. Both applications are from the California Wetfish Producers Association (CWPA) and are renewal requests for an exemption from the expected prohibition on primary directed fishing for Pacific sardine during the 2023–2024 fishing year; the purpose of the requests are to collect Pacific sardine as part of industry-based scientific research. The Council considered these EFP applications concurrently with the 2023–2024 annual harvest specifications for Pacific sardine because Pacific sardine catch under each EFP would be accounted for under the proposed 2023–2024 annual catch limit (ACL), which is 3,953 metric tons (mt). A summary of each EFP application is provided below:

(1) *Proposal for renewal of exempted fishery permit (EFP) to allow take of Pacific sardine (for point sets) in 2023–24 nearshore research program:* The CWPA submitted a renewal application for their CPS Nearshore Cooperative Survey (NCS) program. The purpose of this EFP project is to continue to develop sampling methodology for estimating CPS biomass in shallow waters that are not accessible to NOAA survey ships. Since 2012, the California Department of Fish and Wildlife, in partnership with the CWPA, has been conducting aerial surveys to estimate the biomass and distribution of Pacific sardine and certain other CPS in nearshore waters in the Southern California Bight, and in the Monterey-San Francisco area since the summer of 2017. Currently, there is uncertainty in the biomass estimates from aerial spotter pilots. The CPS–NCS survey aims to quantify that level of uncertainty by capturing CPS schools identified by aerial spotter pilots and validating the biomass and species composition of the schools. If approved, this EFP would allow up to five participating vessels to directly harvest a total of 150 mt of Pacific sardine during the 2023–2024 fishing year. A portion of each point set (*i.e.,* an individual haul of fish captured with a purse seine net) would be retained for biological sampling, and the remainder would be sold by participating fishermen and processors to offset research costs and avoid unnecessary discard.

(2) *Request for renewal of exempted fishery permit (EFP) to allow fishing of Pacific sardine for biological samples in 2023–24 nearshore research program:* The CWPA submitted a renewal application for their biological sampling EFP project. The primary directed fishery for Pacific sardine has been closed since 2015, and consequently, scientists at the Southwest Fisheries Science Center (Science Center) have a limited amount of fishery-dependent data to use in their stock assessment. The goal of this EFP project is to provide fishery-dependent catch data, including biological data (*i.e.,* age and length data from directed harvest), for potential use in Pacific sardine stock assessments. An additional goal for this year is to collaborate with the Science Center in a research project designed to enhance understanding of stock structure by collecting year-round data. If approved, this EFP would allow up to five participating vessels to directly harvest up to 520 mt of Pacific sardine during the 2023–2024 fishing year. A portion of each landing would be retained for biological sampling by the California Department of Fish and Wildlife, and the remainder would be sold by participating fishermen and processors to offset research costs and avoid unnecessary discard.

Altogether, these EFP projects total 670 mt. If NMFS does not issue one or more of these EFPs, the requested tonnage would be available for harvest by other permissible fishing activities during the 2023–2024 fishing year (*e.g.,* live bait or minor directed harvest).

After publication of this notice in the **Federal Register**, NMFS may approve and issue permits to participating vessels after the close of the public comment period. NMFS will consider comments submitted in deciding whether to approve the applications as requested. NMFS may approve the applications in their entirety or may make any alterations needed to achieve the goals of the EFP projects and the FMP. NMFS may also approve different amounts of Pacific sardine allocation for each EFP project if any changes are made to the 2023–2024 proposed sardine harvest specifications before final implementation.

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

Dated: May 15, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–10680 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC953]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that Exempted Fishing Permits to facilitate the use of fishing year 2023 and 2024 monkfish research set-aside days-at-sea warrant further consideration. This notice provides interested parties the opportunity to comment on the proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 5, 2023.

ADDRESSES: You may submit written comments by the following method:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on 2023 Monkfish RSA EFP.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, 978–281–9232, *spencer.talmage@noaa.gov.*

SUPPLEMENTARY INFORMATION: Exempted Fishing Permits (EFP) that waive monkfish landing limits have been routinely approved since 2007 to increase operational efficiency and optimize research funds generated from the Monkfish Research Set-Aside (RSA) Program. These EFPs would facilitate compensation fishing in support of the projects funded under the 2023/2024 monkfish RSA competition. Consistent with previous years of the monkfish RSA program, these RSA compensation fishing EFPs would authorize an exemption for participating vessels from days-at-sea (DAS) landing limit restrictions in the Monkfish Northern and Southern Fishery Management Areas found at 50 CFR 648.94(b)(1) and (2). Vessels fishing under an RSA DAS would be allowed to harvest monkfish in excess of the usual landing limits associated with their Federal permits.

The Monkfish RSA Program is allocated 500 monkfish RSA DAS annually, as established by the New England and Mid-Atlantic Fishery Management Councils in Amendment 2 to the Monkfish Fishery Management Plan (FMP) (70 FR 21929, April 28, 2005). These monkfish RSA DAS are awarded through a competitive grant program in support of monkfish research. Award recipients sell RSA DAS to limited access monkfish vessel owners to fund approved monkfish RSA research projects. Award recipients receive an allocation of RSA DAS and a maximum amount of monkfish that may be landed under available DAS. Projects are constrained to the total DAS, maximum available landing weight, or grant award timetable, whichever is reached first. To calculate a maximum weight allocation that is similar to the Councils' original intent to be harvested under the allocated 500 RSA DAS, NMFS uses twice the landing limit for Permit Category A and C monkfish vessel fishing in the Southern Fishery Management Area (4,074 lb (2 mt) whole weight) for each RSA DAS. Annually, a maximum of 2,037,000 lb (924 mt) of whole weight may be harvested across all Monkfish RSA projects. Allowing vessels an exemption from monkfish landing limits provides an incentive for vessels to purchase and fish under RSA DAS to catch more monkfish per trip, while constraining each project to a maximum available harvest limit ensures that the overall monkfish RSA catch will not be an excessive burden on the fishery as a whole.

If approved, grant awardees may request minor modifications and extensions to their EFPs throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: May 15, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–10681 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD023]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Citizen Science Committee, Mackerel Cobia Committee, Dolphin Wahoo Committee, and Snapper Grouper Committee. The meeting week will also include a formal public comment session and a meeting of the Full Council.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, June 12, 2023 until 12 p.m. on Friday, June 16, 2023.

ADDRESSES:

Meeting address: The meetings will be held at the World Golf Village Renaissance, 500 Legacy Trail, St. Augustine, FL; phone: (904) 635–940–8000. The meeting will also be available via webinar. Registration is required. See **SUPPLEMENTARY INFORMATION.**

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Webinar registration links for the meeting will also be available from the Council's website.

Public comment: Public comment on agenda items may be submitted through the Council's online comment form available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Written comments will be accepted from May 26, 2023 until June 16, 2023. These comments are accessible to the public, part of the Administrative Record of the meeting, and immediately available for Council consideration. A formal public comment session will also be held during the Council meeting.

The items of discussion in the individual meeting agendas are as follows:

Council Session I, Monday, June 12, 2023, 8:30 a.m. Until 12 p.m. (Closed Session)

The Council will meet in Closed Session to receive a litigation brief, review and discuss advisory panel applications, appointments to the Council's Scientific and Statistical Committee (SSC) and SEDAR Pool, and consider selection of the 2022 Law Enforcement Officer of the Year.

Council Session I, Monday, June 12, 2023, 1:30 p.m. Until 4 p.m. (Open Session)

The Council will receive reports from state agencies, Council liaisons, NOAA Office of Law Enforcement, and the U.S. Coast Guard. The Council will receive an update on Highly Migratory Species, the Commercial Electronic Logbook Amendment, and the Council's Research and Monitoring Plan, including presentations from NOAA Fisheries.

Citizen Science Committee, Monday, June 12, 2023, 4 p.m. Until 5 p.m.

The Committee will receive an update on the Council's Citizen Science Program's projects and program evaluation and a presentation on the Citizen Science Project Idea Portal.

Mackerel Cobia Committee, Tuesday, June 13, 2023, 8:30 a.m. Until 11 a.m.

The Committee will receive a report from the Mackerel Cobia Advisory Panel (AP), receive SSC recommendations and discuss management of Spanish mackerel, and discuss options for conducting port meetings for the mackerel fishery. The Committee will discuss king mackerel tournament landings and approve topics for the next meeting of the Mackerel Cobia AP.

Dolphin Wahoo Committee, Tuesday, June 13, 2023, 11 a.m. Until 12 p.m.

The Committee will receive an update on the Dolphin Management Strategy Evaluation from NOAA Fisheries as well as dolphin-related management actions in the Caribbean. The Committee will continue work on Regulatory Amendment 3 to the Dolphin Wahoo Fishery Management Plan currently addressing size limits and recreational retention limits.

Snapper Grouper Committee, Tuesday, June 13, 2023, 1:30 p.m. Until 5 p.m., Wednesday, June 14, 2023, 8:30 a.m. Until 3:45 p.m., and Thursday, June 15, 2023, From 8:30 a.m. Until 10:30 a.m.

The Committee will review the following amendments to the Snapper Grouper Fishery Management Plan being developed and consider recommendations from its advisory panels: Amendment 48 addressing wreckfish management measures; Amendment 44 addressing yellowtail snapper management; Amendment 55 addressing management measures for scamp and yellowmouth grouper; and Amendment 46 addressing recreational permits for the snapper grouper fishery. The Committee is scheduled to approve Amendment 55 for public scoping.

The Committee will also receive a presentation from NOAA Fisheries SEFSC on the latest stock assessment for black sea bass and recommendations from its Scientific and Statistical Committee (SSC). The Committee will also receive updates on sunset provisions for Spawning Special Management Zones, the Stock Assessment and Fishery Evaluation (SAFE) Report, and Best Fishing Practices Outreach. The Committee will also consider recommendations from the SSC and the advisory panels not covered previously in the meeting agenda.

Formal Public Comment, Wednesday, June 14, 2023, 4 p.m.

Public comment will be accepted from individuals attending the meeting in person and via webinar on all items on the Council meeting agenda. The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

Council Session II, Thursday, June 15, 2023, 10:30 a.m. Until 5 p.m. and Friday, June 16, 2023, 8:30 a.m. Until 12 p.m.

The Council will receive a litigation brief if needed, a staff report, and a report on the meeting of the Council Coordinating Committee. The Council will receive presentations on National Standards, Space Operations off the coast of Florida, and Equity and Environmental Justice. The Council will receive reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center. The Council will receive Committee reports, review its workplan for the next quarter, upcoming meetings, and take action as necessary. The Council will discuss any other business as needed.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 16, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10789 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD030]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council.

DATES: The meetings will be held Tuesday, June 6 through Thursday, June 8, 2023. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be an in-person meeting with a virtual option. Council members, other meeting participants, and members of the public will have the option to participate in person at the Hilton Virginia Beach Oceanfront (3001 Atlantic Avenue, Virginia Beach, VA 23451, 757–213–3000) or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: *https://www.mafmc.org/briefing/june-2023*.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org,* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Tuesday, June 6, 2023

2024 Blueline Tilefish Specifications

Review recommendations from the Advisory Panel, SSC, Monitoring Committee, and staff

Review previously adopted commercial and recreational catch and landings limits for 2024 and revise as necessary
Review 2024 specifications and recommend changes if necessary

2024 Golden Tilefish Specifications

Review recommendations from the Advisory Panel, SSC, Monitoring Committee, and staff
Review 2024 specifications and recommend changes if necessary

Unmanaged Commercial Landings Report

Review annual report on landings of unmanaged species

Advanced Notice of Proposed Rulemaking (ANPR): National Standard 4, 8, and 9 Guidelines

(Dr. Tara Scott, NOAA Fisheries)
Presentation on NOAA Fisheries' request for comments on updating the Guidelines for National Standards 4, 8, and 9

Council Statement of Organization Practices and Procedures (SOPP) and Harassment Prevention Policies

Approve model harassment prevention policies
Approve revisions to Council SOPP

Wednesday, June 7, 2023

2024 Atlantic Surfclam and Ocean Quahog Specifications

Review recommendations from the Advisory Panel, SSC, and staff
Review 2024 specifications and recommend changes if necessary

Atlantic Surfclam and Ocean Quahog Advisory Panel Presentation

Advisors' perspectives and requests on their critical issues noted in Fishery Performance Report

2024 Butterfish Specifications

Review recommendations from the Advisory Panel, SSC, Monitoring Committee, and staff
Review 2024 specifications and recommend changes if necessary

2024 Atlantic Chub Mackerel Specifications

Review recommendations from the Advisory Panel, SSC, Monitoring Committee, and staff
Review 2024 specifications and recommend changes if necessary

Highly Migratory Species (HMS) Update

(Karyl Brewster, Rulemaking Branch Chief—HMS Division, NOAA Fisheries)
Proposed rule for Amendment 15 (spatial management and electronic monitoring)
Advance Notice of Proposed Rulemaking: Electronic Reporting Requirements for HMS
Scoping for Amendment 16 (shark management issues)

Monkfish and Dogfish Joint Framework To Reduce the Bycatch of Atlantic Sturgeon (Framework Meeting #1)

Review Advisory Panel and Committee recommendations
Review and approve range of alternatives

Draft 2024–2028 Regional Strategic Plan

(Mike Pentony, Regional Administrator, NOAA Fisheries)
Presentation by GARFO for Council review and discussion

Offshore Wind Update

Update from Bureau of Ocean Energy Management
Update from state working group on compensation
Update from NOAA Fisheries

Thursday, June 8, 2023

Business Session

Committee Reports (SSC, Ecosystem and Ocean Planning); Executive Director's Report; Organization Reports; and Liaison Reports

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: May 16, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10791 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD033]

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 (Council, NEFMC) will hold a one-day closed-session meeting to address employment matters.

DATES: The meeting was held on Wednesday, May 31, 2023, from 9 a.m. to 5 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton Wakefield Boston Hotel and Conference Center, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, May 31, 2023

The Council will meet as a whole in closed session to discuss employment matters. This is the sole item of business on the agenda.

Special Accommodations

No special accommodations are needed for this meeting, which will be conducted in closed session without members of the public present.

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

Dated: May 16, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10792 Filed 5–18–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* June 18, 2023

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/24/2022; 7/8/2022; 12/23/2022; 3/17/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
MR 1191—Tri Angle Mop
Designated Source of Supply: LC Industries, Inc., Durham, NC
Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
Contracting Activity: Defense Commissary Agency
Distribution: C-List

NSN(s)—Product Name(s):
MR 16900—Set, Birthday Bag, Small
MR 16901—Set, All-Occasion Bag, Small
MR 16902—Set, Birthday Bag, Medium
MR 16903—Set, All-Occasion Bag, Medium
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
Contracting Activity: Defense Commissary Agency
Distribution: C-List

NSN(s)—Product Name(s):
5120–01–399–9477—Socket, 1/4″ Drive, 9/32″ Shallow SAE 6 Point Fasteners
5120–01–355–1632—Socket Set, 1/4″ Drive, 3/16″ Deep, SAE 6 Point Fastener
5120–01–335–0949—Socket Set, 1/4″ Drive, 7/32″ Deep, SAE 6 Point Fastener
5120–01–348–9250—
5120–01–348–9251—Socket, Chrome, 1/4″ Drive, 5 mm Shallow, Metric 6 Point Fastener
5120–01–348–9253—Socket, Chrome, 1/4″ Drive, 6 mm Shallow, Metric 6 Point Fastener
5120–01–348–9254—Socket, Chrome, 1/4″ Drive, 7 mm Shallow, Metric 6 Point Fastener
5120–01–348–9257—Socket, Chrome, 1/4″ Drive, 10 mm Shallow, Metric 6 Point Fastener
5120–01–348–9291—Socket, Chrome, 1/4″ Drive, 12 mm Shallow, Metric 6 Point Fastener
5120–01–348–9292—Socket, Chrome, 1/4″ Drive, 13 mm Shallow, Metric 6 Point Fastener
5120–01–348–9293—Socket, Chrome, 1/4″ Drive, 14 mm Shallow, Metric 6 Point Fastener
5120–01–348–7270—Socket, Chrome, 1/4″ Drive, 5 mm Deep, Metric 6 Point Fastener
5120–01–348–7271—Socket, Chrome, 1/4″ Drive, 5.5 mm Deep, Metric 6 Point Fastener
5120–01–348–7272—Socket, Chrome, 1/4″ Drive, 6 mm Deep, Metric 6 Point Fastener
5120–01–348–7273—Socket, Chrome, 1/4″ Drive, 7 mm Deep, Metric 6 Point Fastener
5120–01–112–9519—Socket, Chrome, 1/4″ Drive, 8 mm Deep, Metric 6 Point Fastener
5120–01–348–7275—Socket, Chrome, 1/4″ Drive, 9 mm Deep, Metric 6 Point Fastener
5120–01–080–6534—Socket, Chrome, 1/4″ Drive, 10 mm Deep, Metric 6 Point Fastener
5120–01–348–7264—Socket, Chrome, 1/4″ Drive, 11 mm Deep, Metric 6 Point Fastener
5120–01–348–7265—Socket, Chrome, 1/4″ Drive, 12 mm Deep, Metric 6 Point Fastener
5120–01–348–7266—Socket, Chrome, 1/4″ Drive, 13 mm Deep, Metric 6 Point Fastener
5120–01–348–7267—Socket, Chrome, 1/4″ Drive, 14 mm Deep, Metric 6 Point Fastener
5120–01–348–9189—Socket, Chrome 3/8″ Drive, 10 mm Deep, Metric 6 Point Fastener
5120–01–348–9196—Socket, Chrome 3/8″ Drive, 17 mm Deep, Metric 6 Point Fastener
5120–01–348–9197—Socket, Chrome 3/8″ Drive, 18 mm Deep, Metric 6 Point Fastener
5120–01–335–1070—Extension, Chrome, 1/4″ Drive, 2″ Knurled
5120–01–335–1071—Extension, Chrome, 1/4″ Drive, 4″ Knurled
5120–01–335–0714—Breaker Bar, Chrome, 1/2″ Drive, 15 1/2″
5120–01–335–0935—Socket, 1/4″ Drive, 3/16″ Shallow SAE 6 Point Fasteners
5120–01–335–1057—Extension, Chrome, 3/8″ Drive, 3″ Knurled Friction Ball
5120–01–335–1059—Extension, Chrome, 3/8″ Drive, 6″ Knurled Friction Ball
5120–01–335–1061—Extension, Chrome, 3/8″ Drive, 11″ Knurled Friction Ball
5120–01–355–1865—Speeder Drive, Chrome, 3/8″ Drive, 18″
5120–01–348–9190—Socket, Chrome 3/8″ Drive, 11 mm Deep, Metric 6 Point Fastener
5120–01–348–9191—Socket, Chrome 3/8″ Drive, 12 mm Deep, Metric 6 Point Fastener
5120–01–348–9192—Socket, Chrome 3/8″ Drive, 13 mm Deep, Metric 6 Point Fastener
5120–01–348–9194—Socket, Chrome 3/8″ Drive, 15 mm Deep, Metric 6 Point Fastener
5120–01–348–9195—Socket, Chrome 3/8″ Drive, 16 mm Deep, Metric 6 Point Fastener
5120–01–348–9193—Socket, Chrome 3/8″ Drive, 14 mm Deep, Metric 6 Point Fastener
5120–01–348–9251—Socket, Chrome, 1/4″ Drive, 5 mm Shallow, Metric 6 Point Fastener
5120–01–335–0934—Socket, 1/4″ Drive, 7/32″ Shallow SAE 6 Point Fasteners
5120–01–335–1045—Universal Joint, Chrome, 3/8″ Drive, 2″ Friction Ball
5120–01–348–9107—Socket, Chrome 3/8″ Drive, 19 mm Deep, Metric 6 Point Fastener
5120–01–348–9187—Socket, Chrome 3/8″ Drive, 8 mm Deep, Metric 6 Point Fastener

5120–01–348–9188—Socket, Chrome ⅜″ Drive, 9 mm Deep, Metric 6 Point Fastener
5120–01–348–9255—Socket, Chrome, ¼″ Drive, 8 mm Shallow, Metric 6 Point Fastener
5120–01–348–9256—Socket, Chrome, ¼″ Drive, 9 mm Shallow, Metric 6 Point Fastener
5120–01–348–9290—Socket, Chrome, ¼″ Drive, 11 mm Shallow, Metric 6 Point Fastener
5120–01–335–0951—Socket Set, ¼″ Drive, 9/32″ Deep, SAE 6 Point Fastener
5120–01–348–9252—Socket, Chrome, ¼″ Drive, 5.5 mm Shallow, Metric 6 Point Fastener
5120–01–335–0950—Socket Set, ¼″ Drive, ¼″ Deep, SAE 6 Point Fastener
5120–01–355–1864—Breaker Bar, Chrome, ⅜″ Drive, 8 9/16″

Designated Source of Supply: Wiscraft, Inc., Milwaukee, WI
Mandatory for: Broad Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, FAS HEARTLAND REGIONAL ADMINISTRATO
Distribution: B-List

NSN(s)—Product Name(s):
8520–01–490–7358—Instant Hand Sanitizer, Gel, Portable Flip Cap Bottle, 4oz
8520–01–490–7370—Soap, Antibacterial, Pump Bottle, 12oz

Designated Source of Supply: Travis Association for the Blind, Austin, TX
Mandatory for: Broad Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Distribution: B-List

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2023–10717 Filed 5–18–23; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0020]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Covered Defense Telecommunications Equipment or Services (OMB Control Number 0750–0002)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0750–0002 through September 30, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by July 18, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0750–0002, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0750–0002 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, at 571–296–7152.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 204, Covered Defense Telecommunications Equipment or Services; OMB Control Number 0750–0002.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Reporting Frequency: On occasion.

Number of Respondents: 3,446.

Annual Responses: 172,320.

Annual Response Burden Hours: 62,085.

Needs and Uses: The collection of information is necessary to protect against foreign interference with DoD telecommunications, which could jeopardize our military communications, the lives of our warfighters, and our national security. The collection of information is essential to the mission of the agencies to ensure DoD does not purchase prohibited equipment, systems, and services, and can respond appropriately if any such purchases are not identified until after delivery or use.

This requirement supports implementation of section 1656(b) of the National Defense Authorization Act for Fiscal Year 2018. Section 1656 prohibits DoD from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out the nuclear deterrence mission and homeland defense mission that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as a part of any system.

This requirement is implemented in the Defense Federal Acquisition Regulation Supplement (DFARS) through the provision at 252.204–7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, and the clause at 252.204–2018, Prohibition on Acquisition of Covered Defense Telecommunications Equipment or Services.

This clearance covers the following requirements:

• DFARS 252.204–7017 requires that if an offeror provides an affirmative representation under the provision at 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, that offeror is required to represent whether it will or will not provide under the contract covered defense telecommunications equipment or services.

• DFARS 252.204–7018 requires contractors to report covered telecommunications equipment, systems, and services identified during performance of a contract.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–10682 Filed 5–18–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Office of the Secretary, U.S. Department of Education.

ACTION: Announcement of open meetings.

SUMMARY: This notice sets forth the agenda for the next two meetings of the President's Board of Advisors on Historically Black Colleges and Universities (Board) and provides information to members of the public about how to attend the meetings, request to make oral comments at the meetings, and submit written comments pertaining to the work of the Board.

DATES: On June 21, 2023, the Board will hold a virtual meeting from 11:30 a.m. to 4:30 p.m. E.D.T. The public may join the meeting virtually at *https://ems8.intellor.com/login/847261.* On September 27, 2023, the Board will hold a hybrid meeting from 1:00 p.m. to 5:00 p.m. E.D.T. at the Hyatt Regency Crystal City, located at 2799 Richmond Hwy, Arlington, VA 22202. The public may attend the meeting in person or join the meeting virtually at *https://ems8.intellor.com/login/847262.*

FOR FURTHER INFORMATION CONTACT: Sedika Franklin, Associate Director/Designated Federal Official, U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW, Washington, DC 20202, (202) 453 5630, or by email at *sedika.franklin@ed.gov.*

SUPPLEMENTARY INFORMATION:

The Board's Statutory Authority and Function: The Board is established by 20 U.S.C. 1063e (the HBCUs Partners Act) and Executive Order 14041 (September 3, 2021) and is continued by Executive Order 14048 (September 30, 2021). The Board is also governed by the provisions of 5 U.S.C. chapter 10 (Federal Advisory Committees), which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President, through the White House Initiative on Historically Black Colleges and Universities (Initiative), on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President in the following areas: (i) improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the Nation in achieving its educational goals and in advancing the interests of all Americans; (iv) elevating the public awareness of, and fostering appreciation of, HBCUs; (v) encouraging public-private investments in HBCUs; and (vi) improving government-wide strategic planning related to HBCU competitiveness to align Federal resources and provide the context for decisions about HBCU partnerships, investments, performance goals, priorities, human capital development, and budget planning.

Meeting Agendas: The meeting agenda for both meetings will include roll call; approval of the April 5, 2023 meeting minutes (during the June 21, 2023 meeting) and approval of the June 21, 2023 meeting minutes (during the September 27, 2023 meeting); an update from the Board Chairperson; an update from U.S. Department of Education staff; an update from the Executive Director of the Initiative; a status report from each of the Board's subcommittees (Preservation and Growth, Infrastructure, and Career Pathways and Financial Support and Research); and a discussion regarding the status of the Board's first report to the President. The public comment period at both meetings will begin immediately following the conclusion of such discussions.

Access to the Meetings: An advance RSVP is not required to attend either meeting. The public may join the June 21, 2023 meeting virtually at *https://ems8.intellor.com/login/847261* and may join the September 27, 2023 meeting virtually at *https://ems8.intellor.com/login/847262.* To join the meeting(s), please click on the appropriate link, enter your name, email address, and organization, and follow the prompts to connect to the meeting audio by computer or telephone. Members of the public may virtually join the meetings 10 minutes prior to their start time. Members of the public may attend the September 27, 2023 meeting in person at the Hyatt Regency Crystal City, located at 2799 Richmond Hwy, Arlington, VA 22202. Signs will be posted on the day of the meeting that provide the meeting room location. Those joining in person may enter the meeting room 10 minutes prior to the start time. All members of the public attending the meeting in person are required to sign in at the meeting registration desk located outside of the meeting room.

Submission of requests to make an oral comment: There will be an allotted time for public comment at both the June 21, 2023 meeting and the September 27, 2023 meeting. Members of the public may request to provide an oral comment pertaining to the work of the Board using one of the methods described below. Each commenter who makes a request will have an opportunity to speak for up to two minutes during the public comment period. All oral comments made will become part of the official record of the meeting.

Methods to request to make oral comment: The public may submit an advance request to make oral comment by sending an email to the *whirsvps@ed.gov* mailbox no later than June 18, 2023 for the June 21, 2023 meeting, and/or no later than September 15, 2023 for the September 27, 2023 meeting. Please do not send materials directly to Board members. Please include in the subject line of the email ''Oral Comment Request.'' The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made. Those attending in person may make a request by completing a ''Public Comment Registration Form'' found at the meeting registration table. Those attending virtually may make a request by sending a note via the chat function to the Host and Presenters.

Submission of written public comments: Written comments must be submitted to the *whirsvps@ed.gov* mailbox no later than June 18, 2023 for the June 21, 2023 meeting, and/or no later than September 15, 2023 for the September 27, 2023, meeting. Please include in the subject line ''Written Comments: Public Comment.'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the email or provided in the body of the email message. Please do not send material directly to the members of the Board. Written comments will be added to the meeting summary following each meeting.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Board's website, *https://sites.ed.gov/whhbcu/policy/presidents-board-of-advisors-pba-on-hbcus,* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may also inspect the meeting materials and other Board records at 400 Maryland Avenue SW, Washington, DC, by emailing *oswhi-hbcu@ed.gov* or by calling (202) 453–5634 to schedule an appointment.

Reasonable Accommodations: The meeting sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Notice of the meeting is required by 5 U.S.C. chapter 10 (Federal Advisory Committees) and is intended to notify the public of an opportunity to attend the meetings.

Authority: HBCUs Partners Act, Presidential Executive Order 14041, continued by Executive Order 14048

Donna M. Harris-Aikens,

Deputy Chief of Staff for Strategy, Office of the Secretary.

[FR Doc. 2023–10716 Filed 5–18–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–214–000]

Columbia Gas Transmission, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Greenwood and North Greenwood Storage Fields Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Greenwood and North Greenwood Storage Fields Abandonment Project involving abandonment of facilities by Columbia Gas Transmission, LLC (Columbia) in Steuben County, New York. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ‘‘scoping.’’ The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on June 14, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on April 21, 2023, you will need to file those comments in Docket No. CP23–214–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Columbia provided landowners with a fact sheet prepared by the FERC entitled ‘‘An Interstate Natural Gas Facility On My Land? What Do I Need To Know?’’ which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ‘‘eRegister.’’ You will be asked to select the type of filing you are making; a comment on a particular project is considered a ‘‘Comment on a Filing’’; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–214–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Columbia proposes to abandon its Greenwood and North Greenwood Storage Fields, including all active associated pipelines, facilities, and appurtenances, in Steuben County, New York. According to Columbia, the storage fields are no longer needed, and the project would reduce future integrity risks and eliminate the costs required to maintain the fields.

The Greenwood and North Greenwood Storage Fields Abandonment Project would consist of the following activities:

- abandoning four injection/withdrawal wells by permanently plugging and abandoning;
- abandoning four observations wells and one disposal well by permanently plugging and abandoning;
- abandoning approximately 3 miles of associated storage lines in the Greenwood Fields, consisting of three 8-inch-diameter laterals, and five 4-inch-diameter laterals. About 0.1 mile would be abandoned by removal and about 2.9 miles would be abandoned in place;
- abandoning by removal the North Greenwood Compressor Station, including all below- and above-ground structures;
- abandoning by removal all above-ground appurtenances; and
- abandoning in place the remaining below-ground brine lines and miscellaneous appurtenances.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Abandonment of the proposed facilities would temporarily disturb about 25.8 acres of land. This includes about 15.5 acres of existing easements, 3.8 acres of existing access roads, 3.6 acres of existing facility space, and 2.8 acres of temporary workspaces. Following the removal of facilities, Columbia would restore workspaces to their former uses.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–214–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (Appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

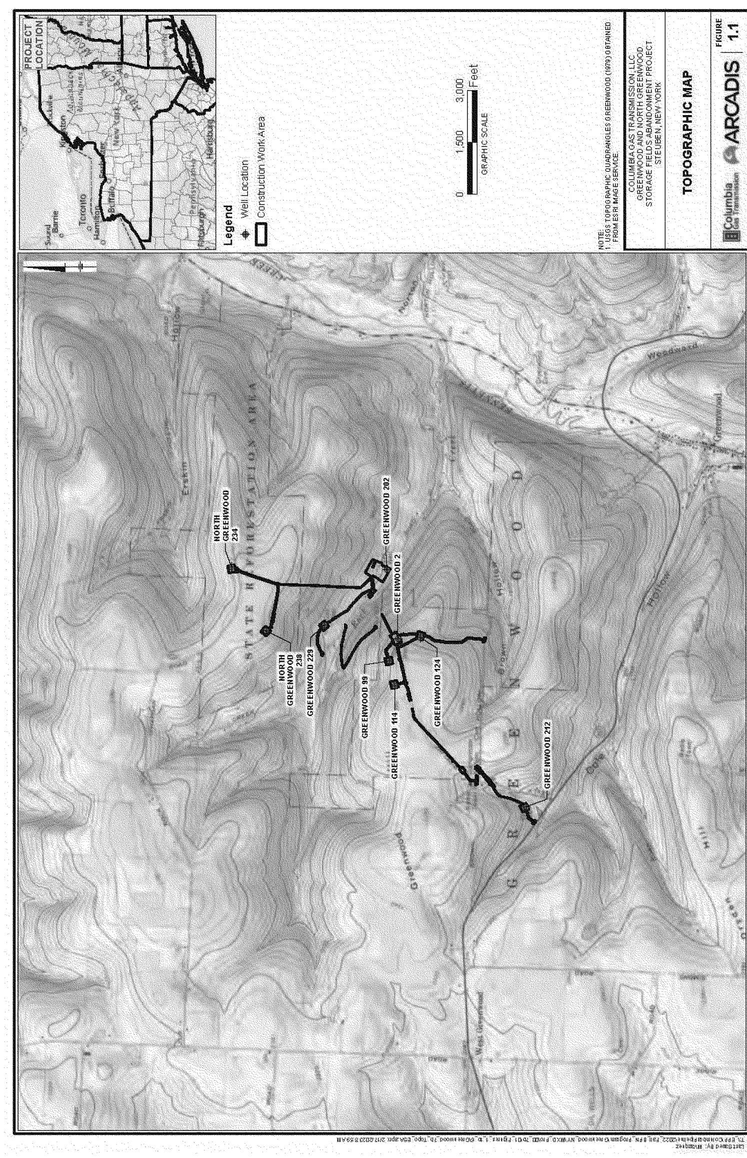
Dated: May 15, 2023.

Kimberly D. Bose,

Secretary.

Appendix 1

BILLING CODE 6717–01–P



Appendix 2

MAILING LIST UPDATE FORM

GREENWOOD AND NORTH GREENWOOD STORAGE FIELDS ABANDONMENT PROJECT

Name____

Agency______________________________________

Address_____________________________________

City_________________**State**______ **Zip Code**________

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

FROM____________________________

____

____

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ATTN: OEP - Gas 2, PJ - 11.2
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

(CP23-214-000, Greenwood and North Greenwood Storage Fields Abandonment Project)

[FR Doc. 2023–10739 Filed 5–18–23; 8:45 a.m.]

BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–466–000]

Great Basin Gas Transmission Company; Notice of Application and Establishing Intervention Deadline

Take notice that on May 1, 2023, Great Basin Gas Transmission Company (Great Basin), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed an application under sections 7b and 7c of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization for its 2024 Expansion Project (Project). Great Basin proposes to: (1) construct approximately 0.25 miles of 20-inch-diameter pipeline loop along its Carson Lateral in Storey County, Nevada; (2) replace approximately 2.88 miles of existing 10-inch-diameter pipeline with new 20-inch-diameter pipeline along the Carson Lateral in Lyon County, Nevada; and (3) construct approximately 0.28 miles of 12-inch-diameter pipeline loop on its South Tahoe Lateral in Douglas County, Nevada. The Project will provide 5,674 dekatherms per day of incremental firm transportation service to meet the growth requirements of two existing firm transportation shippers. Great Basin estimates the total cost of the Project to be $14,939,850 and proposes a new incremental recourse rate to apply to the Project capacity, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Water Quality Certification

Great Basin's application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from the Nevada Division of Environmental Protection—Bureau of Water Quality Planning. 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 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 Frank J. Magliette Jr., Senior Manager/Interstate Pipelines/Business Operations, P.O. Box 94197, Las Vegas, Nevada 89193–4197, by phone at (702) 876–7384, or by email at *frank.magliette@swgas.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of 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 June 5, 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 June 5, 2023.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP23–466–000 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 (CP23–466–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[2] has

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 385.102(d).

the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [3] and the regulations under the NGA [4] by the intervention deadline for the project, which is June 5, 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 CP23–466–000 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 CP23–466–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email at: Frank J. Magliettei Jr., Senior Manager/Interstate Pipelines/Business Operations, P.O. Box 94197, Las Vegas, Nevada 89193–4197 or at *frank.maglietti@swgas.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 [5] motions to intervene are automatically granted by operation of Rule 214(c)(1).[6] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[7] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) 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 June 5, 2023.

Dated: May 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10738 Filed 5–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–88–000.
Applicants: Mustang Hills, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Mustang Hills, LLC.
Filed Date: 5/12/23.
Accession Number: 20230512–5190.
Comment Date: 5 p.m. ET 6/2/23.

Docket Numbers: EC23–89–000.
Applicants: Consolidated Water Power Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Consolidated Water Power Company.
Filed Date: 5/15/23.
Accession Number: 20230515–5173.
Comment Date: 5 p.m. ET 6/5/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–67–000.
Applicants: Invenergy Nelson LLC, *Invenergy Nelson LLC* v. *PJM Interconnection, L.L.C.*
Description: Complaint of *Invenergy Nelson LLC* v. *PJM Interconnection, L.L.C.*
Filed Date: 5/12/23.
Accession Number: 20230512–5179.
Comment Date: 5 p.m. ET 6/1/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2584–002.
Applicants: Transource Maryland, LLC, American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: Transource MD Order No. 864 Compliance Filing, Att. H–30A ER20–2584 to be effective 1/27/2020.
Filed Date: 5/15/23.
Accession Number: 20230515–5047.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1876–000.
Applicants: Public Service Company of Colorado.

[3] 18 CFR 385.214.

[4] 18 CFR 157.10.

[5] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[6] 18 CFR 385.214(c)(1).

[7] 18 CFR 385.214(b)(3) and (d).

Description: § 205(d) Rate Filing: 2023–05–12 TSGT Fox Run Bndry Meter Agrmt 743 0.0.0 to be effective 7/11/2023.
Filed Date: 5/12/23.
Accession Number: 20230512–5173.
Comment Date: 5 p.m. ET 6/2/23.

Docket Numbers: ER23–1877–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6182; Queue No. AD2–163 to be effective 7/14/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5038.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1878–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5984; Queue No. AC1–174/AC1–175 (amend) to be effective 7/15/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5063.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1879–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 682 1st Rev—NITSA with Western Area Power Administration to be effective 7/1/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5082.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1880–000.
Applicants: Sun Streams Expansion, LLC.
Description: § 205(d) Rate Filing: Assignment of Shared Facilities Common Ownership Interest to be effective 5/16/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5087.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1881–000.
Applicants: Sun Streams Expansion, LLC.
Description: § 205(d) Rate Filing: LGIA Co-Tenancy Agreement to be effective 5/16/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5091.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1882–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5835; Queue No. AF2–288 to be effective 7/14/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5096.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1883–000.
Applicants: Sun Pond, LLC.
Description: Baseline eTariff Filing: Certificates of Concurrence for A&R SFA and Assignment Agreement to be effective 5/16/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5110.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1884–000.
Applicants: Sun Pond, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 5/16/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5113.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1885–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Honeycomb Solar Generation Interconnection Agreement to be effective 5/1/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5142.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1886–000.
Applicants: IP Oberon II, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 6/5/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5147.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1887–000.
Applicants: IP Oberon II, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to Shared Facilities Agreement to be effective 6/5/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5150.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1888–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Brightside Solar 1st A&R Generation Interconnection Agreement to be effective 5/1/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5156.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1889–000.
Applicants: Sweetland Wind Farm, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 7/15/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5158.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1890–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 6903; Queue No. AB1–087 to be effective 5/16/2023.
Filed Date: 5/15/23.
Accession Number: 20230515–5185.
Comment Date: 5 p.m. ET 6/5/23.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR23–1–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for approval of revisions to the Texas Reliability Entity, Inc. Regional Reliability Standards Develop.m.ent Process.
Filed Date: 5/15/23.
Accession Number: 20230515–5202.
Comment Date: 5 p.m. ET 6/5/23.

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 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10754 Filed 5–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–769–000.
Applicants: North Baja Pipeline, LLC.
Description: § 4(d) Rate Filing: NBX Project—Sempra Negotiated Rate/Non Conforming Agmt 125154 to be effective 6/1/2023.
Filed Date: 5/12/23.

Accession Number: 20230512–5170.
Comment Date: 5 p.m. ET 5/24/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10755 Filed 5–18–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–10937–01–OCSPP]

Access to Confidential Business Information; Industrial Economics, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that information submitted to EPA under the Toxic Substances Control Act (TSCA), including information that may have been claimed as or determined to be Confidential Business Information (CBI), will be transferred to its contractor Industrial Economics, Incorporated (IEc) of Cambridge, MA in accordance with the CBI regulations. Access to this information will enable the contractor to fulfill the obligations of the contract with EPA.

DATES: Access to the information will occur no sooner than May 26, 2023.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Colby Lintner or Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone numbers: (202) 564–8182 or (202) 564–4767; email addresses: *lintner.colby@epa.gov* or *schwoerer.adam@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe all the entities that may be affected by this action.

B. Is there a docket for this action?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *https://www.regulations.gov.* This docket does not contain the information that is being transferred. Additional instructions on accessing the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Contract Requirements

Under EPA contract number 68HERC23D0020, contractor Industrial Economics, Incorporated (IEc), located at 2067 Massachusetts Avenue, Cambridge, MA 02140, will assist the Office of Pollution Prevention and Toxics (OPPT) by conducting financial and economic analyses in TSCA enforcement actions and will also review tax returns, financial statements, and other information that may contain CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that the personnel of this contractor will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. EPA is issuing this notice to inform all submitters of information to EPA under all sections of TSCA that EPA will provide this contractor with access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, the contractor's site, located at 2067 Massachusetts Avenue, Cambridge, MA 02140, and at telework locations of EPA and contractor personnel in accordance with EPA's TSCA CBI Protection Manual and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI. All personnel will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

Access to TSCA data, including CBI, will continue until April 2, 2028. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 15, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–10672 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–070]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 8, 2023 10 a.m. EST Through May 15, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230064, Final, USAF, GA, Moody Air Force Base Comprehensive Airspace Initiative, Review Period Ends: 06/20/2023, Contact: Grace Keesling 210–925–4534.

EIS No. 20230065, Draft Supplement, FRA, DC, Washington Union Station Expansion Project, Comment Period Ends: 07/06/2023, Contact: Amanda Murphy 202–339–7231.

EIS No. 20230066, Draft, BOEM, NJ, Atlantic Shores Offshore Wind South, Comment Period Ends: 07/03/2023, Contact: Jessica Stromberg 703–787–1722.

EIS No. 20230067, Draft, TVA, TN, Kingston Fossil Plant Retirement, Comment Period Ends: 07/03/2023, Contact: Chevy Williams 423–751–7316.

Amended Notice

EIS No. 20230059, Draft Supplement, BLM, WY, Buffalo Field Office Draft Supplemental Environmental Impact

Statement and Potential Resource Management Plan Amendment, Comment Period Ends: 08/03/2023, Contact: Tom Bills 307–684–1131.

Revision to FR Notice Published 05/05/2023; Extending the Comment Period from 06/20/2023 to 08/03/2023.

Dated: May 15, 2023.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2023–10776 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2020–0701; FRL–10987–01–ORD]

Availability of the Integrated Science Assessment for Lead (Pb) (External Review Draft); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; public comment period; extension.

SUMMARY: The Environmental Protection Agency (EPA) is extending the public comment period by two weeks for the document titled, ''Integrated Science Assessment for Lead (Pb) (External Review Draft)'' The original **Federal Register** document announcing the public comment period was published on March 31, 2023.

DATES: The public comment period for the notice published on March 31, 2023 (88 FR 19302), is being extended by two weeks. The EPA must receive comments on or before June 13, 2023.

ADDRESSES: The ''Integrated Science Assessment for Lead (Pb) (External Review Draft)'' is available via the internet on EPA's Integrated Science Assessment Lead page at *https://www.epa.gov/isa/integrated-science-assessment-isa-lead* and in the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2020–0701.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; facsimile: 202–566–9744; or email: *ord.docket@epa.gov.*

For technical information, contact Evan Coffman; phone: (919) 541–0567; facsimile: 919–541–5078; or email: *Coffman.Evan@epa.gov* or Meredith Lassiter; phone (919) 541–3200; facsimile: 919–541–5078; or email: *Lassiter.Meredith@epa.gov.*

SUPPLEMENTARY INFORMATION: How to Submit Technical Comments to the Docket at *https://www.regulations.gov* Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2020–0701 for Availability of the Integrated Science Assessment for Lead (Pb) (External Review Draft), by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ord.docket@epa.gov.*
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Research and Development Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal Holidays). If you provide materials by mail or hand delivery, please submit three copies of these materials. For attachments, provide an index, number pages consecutively with the materials, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2020–0701. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and will only be considered if time permits. It is EPA's policy to include all materials it receives in the public docket without change and to make the materials available online at *www.regulations.gov,* including any personal information provided, unless materials include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the materials that are placed in the public docket and made available on the internet. If you submit electronic materials, EPA recommends that you include your name and other contact information in the body of your materials and with any disk or CD–ROM you submit. If EPA cannot read your materials due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider the materials you submit. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EPA's Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health and Environmental Assessment, Office of Research and Development.

[FR Doc. 2023–10737 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10927–01–OW]

South Florida Clean Coastal Waters Act—Interim Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), in partnership with the National Oceanic and Atmospheric Administration (NOAA), announces a series of public meetings of the Interagency Working Group on the Harmful Algal Bloom and Hypoxia Research and Control Act (IWG–HABHRCA). The purpose of these meetings is for the IWG–HABHRCA to provide updates on the assessment of harmful algal blooms (HABs) and hypoxia in South Florida, including a presentation of progress to-date as well as next steps, as is required by the South Florida Clean Coastal Waters Act of 2021. The meetings will be open to the

public and conducted in a hybrid format with both in-person and virtual attendance options. Please see **SUPPLEMENTARY INFORMATION** for further details.

DATES: Public meetings will be held between June 26–June 29, 2023, at the following locations in South Florida:

1. Fort Pierce—June 26, 2023 (9:00 a.m.–12:00 p.m.)
2. Belle Glade—June 28, 2023 (9:00 a.m.–12:00 p.m.)
3. Fort Myers—June 29, 2023 (1:00 p.m.–4:00 p.m.)

Exact locations will be provided to those that register. More information on how to register can be found in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Becky Allenbach, South Florida Program, Water Division, U.S. Environmental Protection Agency—Region 4, telephone number: 404–562–9687, email address: *allenbach.becky@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In South Florida, HABs and hypoxia—the overgrowth of algae/cyanobacteria and often related severe oxygen depletion—are observed in lakes, rivers, estuaries, and coastal areas. These HABs proliferate when environmental conditions (*e.g.,* winds, temperatures, currents, excess nutrients) are favorable, and can result in significant impacts to human health and the environment as well as local economies.

Coordinated federal efforts to address HABs and hypoxia began with the passage of the Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA) in 1998. Pub. L. 105–383, 112 Stat. 3447. HABHRCA established an interagency working group (IWG), which now consists of over twenty member agencies, co-chaired by NOAA and EPA. 33 U.S.C. 4001(a).

The South Florida Clean Coastal Waters Act of 2021 requires the IWG–HABHRCA to conduct a regional assessment of South Florida. 33 U.S.C. 4004a(b). The assessment needs to address the status of, and gaps within, current HAB and hypoxia research, monitoring, management, prevention, response, and control activities. 33 U.S.C. 4004a(b)(3). In addition, the IWG–HABHRCA needs to develop and submit to Congress a plan, based on the assessment, for reducing, mitigating, and controlling HABs and hypoxia in the South Florida region. 33 U.S.C. 4004a(c).

The first step in this process is to conduct an interim assessment that will represent a synthesis of the state of knowledge of HABs and hypoxia in South Florida. This interim assessment will serve to guide the full integrated assessment and plan. Currently, the IWG–HABHRCA is seeking feedback on progress to-date to ensure that the interim assessment is accurate and inclusive of ongoing efforts by State, local, and tribal governments as well as non-governmental, academic groups, and private industry.

II. Purpose of the Public Meetings

EPA and NOAA, along with other members of the IWG–HABHRCA, will hold three public meetings in the South Florida region during the week of June 26, 2023. The purpose of these public meetings is for the IWG–HABHRCA to update the public on the assessment of HABs and hypoxia in South Florida, including a presentation of progress to-date and next steps. Specifically, the IWG–HABHRCA will at these public meetings:

(1) Present an overview of the assessment process that describes project scope, methods, and types of information requested;

(2) Present the assessment outline and discuss information gathered to-date and highlight gaps; and

(3) Receive feedback from attendees.

III. How can I participate in these public meetings?

The meetings will be open to the public and conducted with both in-person and virtual attendance options. Registration information, meeting materials, and opportunities to provide public input can be found at: *https://coastalscience.noaa.gov/science-areas/habs/habhrca/clean-coastal-waters-act*.

Registration for the Meeting: Registration is required. Interested persons who wish to attend either in-person or virtually must register by June 9, 2023.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available 15 days before the meeting date.

Procedures for Providing Public Input: Registered attendees may provide comments verbally and in writing during and up to 30 days after the public meeting. Written comments are encouraged. Oral statements may also be delivered in-person but will be limited to three minutes in length and may not be possible if the number of commenters exceeds the allotted time on the agenda for verbal comments.

Radhika Fox,

Assistant Administrator.

[FR Doc. 2023–10671 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0014; FRL–10969–01–OAR]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Environmental Protection Agency (EPA) is announcing a public meeting of the Clean Air Act Advisory Committee (CAAAC). The EPA renewed the CAAAC charter on October 31, 2022, to provide independent advice and counsel to EPA on economic, environmental, technical, scientific and enforcement policy issues associated with implementation of the Clean Air Act of 1990.

DATES: The CAAAC will hold its next hybrid public meeting; in-person at EPA Headquarters, Washington, DC and virtual on Tuesday, June 27, 2023, from 1:00 p.m. to 4:00 p.m. and Wednesday, June 28, 2023, from approximately 9:00 a.m. to 12:00 p.m. (EST). Members of the public may register to attend or listen to the meeting or provide comments, by emailing *caaac@epa.gov* by 5:00 (EST) June 26, 2023.

FOR FURTHER INFORMATION CONTACT: Lorraine Reddick, Designated Federal Official, Clean Air Act Advisory Committee (6103A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1293; email address: *reddick.lorraine@epa.gov.* Additional information about this meeting, the CAAAC, and its subcommittees and workgroups can be found on the CAAAC website: *http://www.epa.gov/caaac/.*

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. app. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next hybrid public meeting on Tuesday, June 27, 2023, from 1:00 p.m. to 4:00 p.m. (EST) and Wednesday, June 28, 2023, from approximately 9:00 a.m. to 12:00 p.m. (EST).

The committee agenda and any documents prepared for the meeting will be publicly available on the CAAAC website at *http://www.epa.gov/caaac/* prior to the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available on the CAAAC website or by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2023–0014. The docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

For information on access or services for individuals with disabilities, please contact Lorraine Reddick at *reddick.lorraine@epa.gov,* preferably at least 7 days prior to the meeting to give EPA as much time as possible to process your request.

May 12, 2023.

Lorraine Reddick,

Designated Federal Officer, Office of Air Policy and Program Support.

[FR Doc. 2023–10668 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on an Invitation To Comment, Reexamination of Existing Standards

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an Invitation to Comment titled *Reexamination of Existing Standards.* Respondents are encouraged to comment on any part of the Invitation to Comment. Written comments are requested by September 15, 2023, and should be sent to *fasab@fasab.gov* or Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

ADDRESSES: The Invitation to Comment is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: May 15, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–10674 Filed 5–18–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of May 31, 2023, FASAB Meeting

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will hold a meeting on May 31, 2023. The purpose of the meeting is to discuss issues related to embedded leases. The meeting will begin at 1 p.m. and conclude at 3:00 p.m. The meeting will be held virtually and open to the public.

ADDRESSES: The agenda, briefing materials, and teleconference information for the meeting will be available at *https://www.fasab.gov/briefing-materials/approximately* one week before the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: May 15, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–10675 Filed 5–18–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23–06]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a special meeting on this date.

Location: Virtual meeting via Webex.

Date: May 3, 2023.

Time: 10:55 a.m. ET.

Action and Discussion Item

Personnel Matter

The ASC convened a special meeting to discuss and take a vote on a personnel matter. The vote passed 6–0 to accept an ASC staff recommendation on the personnel matter. The Federal Reserve Board member and alternate were not available for the vote.

James R. Park,

Executive Director.

[FR Doc. 2023–10687 Filed 5–18–23; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 20, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org.*

1. *Lake Central Financial, Inc., Annandale, Minnesota;* to acquire State Bank of Danvers, Benson, Minnesota.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org.*

1. *Vista Holding Company, St. Louis, Missouri;* to become a bank holding company by acquiring Mohler Bancshares, Inc., and thereby indirectly acquiring The First National Bank of Harveyville, both of Harveyville, Kansas.

C. Federal Reserve Bank of San Francisco: (Joseph Cuenco, Assistant Vice President) 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to: *sf.fisc.comments.applications@sf.frb.org.*

1. *BancPacific Financial Holding Corporation, Hagatna, Guam, and Marianas Finance Corporation, Tamuning, Guam;* to become bank holding companies by acquiring BancPacific Ltd., Hagatna, Guam, upon the conversion of BankPacific Ltd., from a savings association to a commercial bank.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–10761 Filed 5–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–23CO]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ‘‘National Center for Health Statistics (NCHS) Rapid Surveys System (RSS)’’ to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ‘‘Proposed Data Collection Submitted for Public Comment and Recommendations’’ notice on February 17, 2023 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under 30-day Review—Open for Public Comments’’ or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Center for Health Statistics (NCHS) Rapid Surveys System (RSS)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (HHS), acting through NCHS, collect data about the health of the population of the United States. The NCHS Rapid Surveys System (RSS) will collect data on emerging public health topics, attitudes, and behaviors using cross-sectional samples from two commercially available, national probability-based online panels. The RSS will then combine these data to form estimates that approximate national representation in ways that many data collection approaches cannot. The RSS is intended to collect data in contexts in which decision makers' need for time-sensitive data of known quality about emerging and priority health concerns is a higher priority than their need for statistically unbiased estimates.

The RSS will complement NCHS's current household survey systems. As quicker turnaround surveys that require less accuracy and precision than CDC's more rigorous population representative surveys, the RSS will incorporate multiple mechanisms to carefully evaluate the resulting survey data for their appropriateness for use in public health surveillance and research (*e.g.,* hypothesis generating) and facilitate continuous quality improvement by supplementing these panels with intensive efforts to understand how well the estimates reflect populations at most risk. The RSS data dissemination strategy will communicate the strengths and limitations of data collected through online probability panels as compared to more robust data collection methods.

The RSS has three major goals: (1) to provide CDC and other partners with time-sensitive data of known quality about emerging and priority health concerns; (2) to use these data collections to continue NCHS's evaluation of the quality of public health estimates generated from commercial online panels; and (3) to improve methods to communicate the appropriateness of public health estimates generated from commercial online panels.

Each round's questionnaire will consist of four main components: (1) basic demographic information on respondents to be used as covariates in analyses; (2) new, emerging, or supplemental content proposed by NCHS, other CDC Centers, Institute, and Offices, and other HHS agencies; (3) questions used for calibrating the survey weights; and (4) additional content selected by NCHS to evaluate against relevant benchmarks. NCHS will use questions from Components 1 and 2 to provide relevant, timely data on new, emerging, and priority health topics to be used for decision making. NCHS will use questions from Components 3 and 4 to weight and evaluate the quality of the estimates coming from questions in

Components 1 and 2. Components 1 and 2 will contain different topics in each round of the survey. NCHS will submit a 30-day **Federal Register** Notice with information on the contents of each round of data collection.

In the first round of RSS, contributed content is included on knowledge, attitudes, and beliefs regarding Long COVID; mammograms and notifications about breast density; medical procedures on fallopian tubes and ovaries; concerns about genetic testing; knowledge about the relationship between alcohol use and cancer; sunscreen use and beliefs about sunscreen; use of chemical hair straighteners, relaxers, or pressing products; use of air cleaners or purifiers in the home; intimate partner violence; and new questions about race and ethnicity to assist in the development of recommendations on how to improve the quality and usefulness of OMB Statistical Policy Directive No. 15.

NCHS will calibrate data from the RSS to other surveys. Questions used for calibration in the first round of RSS will include marital status and employment, social and work limitations, use of the internet in general and for medical reasons, telephone use, civic engagement, and language used at home and in other settings. All these questions have been on the National Health Interview Survey (NHIS) in prior years allowing calibration to these data.

Finally, several questions that were previously on NHIS will be used for benchmarking. Panelists in the RSS will be asked if they have been told they have chronic conditions including hypertension, high cholesterol, coronary heart disease, asthma, diabetes, and Long COVID. Questions about self-reported health; pregnancy status; height and weight, difficulty paying medical bills; access to and use of medical, dental, eye care and physical therapy; preventive care; mental health; and cigarette use will be used to benchmark the RSS to NCHS surveys.

The RSS is designed to have four rounds of data collection each year with data being collected by two contractors with probability panels. A cross-sectional nationally representative sample will be drawn from the online probability panel maintained by each of the contractors. As part of the base (minimum sample size), each round of data collection will collect 2,000 responses per quarter. The RSS can be expanded by increasing the number of completed responses per round or the number of rounds per year as needed up to a maximum of 28,000 responses per year per contractor or 56,000 total responses per year. Additionally, each data collection may include up to 2,000 additional responses per quarter (8,000 for the year) to improve representativeness. This increases the maximum burden by up to 16,000 responses per year. The RSS may also target individual surveys to collect data only from specific subgroups within existing survey panels and may supplement data collection for such groups with additional respondents from other probability or nonprobability samples. An additional 12,000 responses per year may be used for these developmental activities. Survey questions being asked of the panelists will be cognitively tested. This cognitive testing will help survey users interpret the findings by understanding how respondents answer each question.

CDC requests OMB approval for an estimated 28,079 burden hours annually over the course of the three-year approval period. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults 18+	Base Surveys	16,000	1	20/60
Adults 18+	Potential Sample Expansion	40,000	1	20/60
Adults 18+	Additional Surveys to Increase Representativeness	16,000	1	20/60
Adults 18+	Developmental: Additional Surveys for Specific Subgroups	12,000	1	20/60
Adults 18+	Cognitive interviews	80	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–10745 Filed 5–18–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0841; Docket No. CDC–2023–0038]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Management Information System for Comprehensive Cancer Control Programs''. The CDC will use annual key informant interviews and biennial NCCCP survey to monitor program outcomes and report progress to CDC yearly.

DATES: CDC must receive written comments on or before July 18, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0038 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600

Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;

2. 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;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. 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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

Management Information System for Comprehensive Cancer Control Programs (OMB Control No. 0920–0841, Exp. 7/31/2023)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

CDC requests a Revision of the National Comprehensive Cancer Control Program's (NCCCP) Management Information System for Comprehensive Cancer Control Programs (OMB Control No. 0920–0841, Exp. 7/31/2023) to continue electronic data collection of information about the NCCCP, funded by the Comprehensive Cancer Control Branch of the CDC.

The Comprehensive Cancer Control Branch manages the NCCCP, which provides funding to 66 State health departments and the District of Columbia, US Territories and Freely Associated States, Federally Recognized American Indian Tribes, Tribal Organizations, Alaska Native Organizations, and Urban Indian Organizations; or their Bona Fide Agents, to design, implement, and evaluate comprehensive cancer control plans to reduce the burden of cancer locally. Support for these programs is a cornerstone of CDC efforts to reduce the burden of cancer throughout the nation. Awards to individual applicants are made for a five-year program period. Continuation awards for subsequent budget periods are made on the basis of satisfactory progress in achieving both national and program-specific goals and objectives, as well as the availability of funds.

In 2022, 66 recipients were selected for funding for DP22–2202 (''Cancer Prevention and Control Programs for State, Territorial, and Tribal Organizations'') to implement a program to support cancer coalition efforts that leverage resources to plan and implement evidence-based strategies to promote the primary prevention of cancer; support cancer early detection efforts; address the needs of cancer survivors; and promote health equity.

Consistent with programmatic changes, the proposed data collection plan for DP22–2202 has been redesigned to increase efficiency by updating existing and adding new data collection instruments. This revised data collection will allow CDC to continue providing routine feedback to recipients based on their data submissions, tailor technical assistance as needed, support program planning, and assess program outcomes. In this Revision request, CDC seeks OMB approval to use an interview and web-based survey to collect, store, retrieve, share, and report accurate and timely information to monitor and evaluate recipient performance.

OMB approval is requested for three years. The total estimated annualized burden hours requested are 401 hours. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Program Director for State-, Tribal-, or Territorial-based Cancer Prevention and Control Program.	NCCCP Survey	132	2	45/60	198
Program Director for State-, Tribal-, or Territorial-based Cancer Prevention and Control Program.	NCCCP Annual Key Informant Interview.	54	5	90/120	203
Total					401

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–10747 Filed 5–18–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23EZ; Docket No. CDC–2023–0037]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Workplans for Regional Centers to Enhance Public Health Preparedness and Response. This data collection is designed to support regional centers' creation of a five-year workplan which addresses focus areas that would benefit from use of new or enhanced evidence-based strategies (EBSI), existing and needed approaches to meet regional emergency preparedness and EBSI needs, proposed measures to ensure strategies and interventions are effectively implemented, and regional sustainability of evidence-based practice beyond the five-year workplan.

DATES: CDC must receive written comments on or before July 18, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0037 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.* Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. 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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

Workplans for Regional Centers to Enhance Public Health Preparedness and Response—New—Office of Readiness and Response (ORR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since 2001, CDC has supported the development, implementation, evaluation, translation and dissemination of research findings, strategies, and interventions to improve public health preparedness and response systems, infrastructures, processes, and practices. This includes the long-standing PHEP cooperative agreement, CDC's Public Health Crisis Response Funding, and support for applied research and evaluation, metrics, measures, tools, and training development.

In 2021, with contract support, CDC's Office of Applied Research (OAR) initiated 12 scoping reviews, six landscape analyses, and one systematic review to conduct deeper dives into topics such as trust in public health preparedness and response, emergency communications strategies with people with limited English proficiency, public health emergency preparedness and response (PHEPR) practice in rural and tribal communities, and use of health equity coordinators in incident management. The results of these reviews show great breadth in the PHEPR field as it relates to knowledge available to support current practice and highlights the need to expand knowledge to address specific gaps. These needs and gaps may differ across geographical regions and within those regions at the state or local level. To address needs to increase the uptake of evidence-based interventions, in December 2022, through Section 2231 of the Federal appropriations for fiscal year 2023, CDC was directed to support not fewer than 10 Centers for PHEPR that are equally distributed among the geographical regions of the U.S. (referred to as the ''network of centers''.

The goal of this project is to conduct a needs assessment to enhance the PHEPR capabilities in the 10 designated Health and Human Services (HHS) regions by creating an optimal five-year workplan to implement evidence-based strategies or interventions (EBSI) in this space. The five-year workplan will address: (1) focus areas that would benefit from use of new or enhanced evidence-based strategies or interventions (EBSI) or interventions, particularly to increase health equity; (2) existing and needed approaches as well as STLT health departments' capacity and capability to meet regional emergency preparedness and EBSI needs; (3) prioritized strategies and interventions to implement (and develop, if needed) EBSIs over the next five years; (4) proposed quantitative (required) and qualitative (optional) measures to ensure strategies and interventions are effectively implemented; and (5) regional sustainability of evidence-based practice beyond the five-year work plan.

Contractors will collect information from the 10 HHS regional Strategic Coordinators to develop individualized workplans for their respective regions to increase the implementation of EBSIs for PHEPR activities.

OMB approval is requested for six months. The total estimated annualized burden for this information collection is 80 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
HHS Regional Strategic Coordinators	Office of Applied Research Five-Year Regional Work Plan Development Template FY 2024–2028.	10	1	8	80
Total	....	....	....	....	80

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–10742 Filed 5–18–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23–1015 Docket No. CDC–2023–0039]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Electronic Health Records Survey (NEHRS). NEHRS will collect information about the use of electronic health records (EHRs) systems, documentation of social determinants of health or social needs, interoperability, exchange of patient health information with public health agencies, and use of telemedicine technology among office-based and outpatient physicians in the United States.

DATES: CDC must receive written comments on or before July 18, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0039 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. 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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

National Electronic Health Records Survey (NEHRS) (OMB Control No. 0920–1015)—Reinstatement—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for Health Statistics (NCHS) requests a Reinstatement with a Change for a three-year clearance to the National Electronic Health Records Survey (NEHRS). NCHS is requesting approval to collect data for 2024, 2025, and 2026 NEHRS cohorts.

NEHRS is a national survey of office-based physicians conducted by NCHS, and sponsored by the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS). The survey is conducted under the authority of section 306 of the Public Health Service Act (42U.S.C. 242k).

Although there are other surveys that collect information from United States office-based physicians, NEHRS is unique in that it provides nationally representative information about the use of electronic health records (EHR) and other health information technologies. Additional justifications for conducting future rounds of NEHRS include the need for more complete data to study: (1) documentation of social needs; (2) trends in interoperability; (3) the exchange of patient health information with public health agencies; and (4) the use of telemedicine technology. The new data collections will reestablish trends of patient health information exchange with public health agencies, telemedicine technology use, as well as the evolving engagement in interoperability; particularly with respect to electronically sending, receiving, integrating, and searching for patient health information through these systems. Improving interoperability of electronic health information is a major priority for ONC, and NEHRS provides ONC with data on physicians' experience with interoperability.

CDC requests OMB approval for an estimated 5,544 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Office-based physicians or office staff	NEHRS	16,633	1	20/60	5,544
Total					5,544

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–10748 Filed 5–18–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–0853]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Asthma Information Reporting System (AIRS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 20, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Asthma Information and Reporting System (AIRS) (OMB Control No. 0920–0853, Exp. 5/31/2023)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1999, the CDC began its National Asthma Control Program (NACP), a public health approach to address the burden of asthma. The program supports the proposed objectives of ''Healthy People 2030'' for asthma and is based on the public health principles of surveillance, partnerships, interventions, and evaluation. CDC requests a three-year approval for an Extension of Asthma Information Reporting System (AIRS) (OMB Control No. 0920–0853; Expiration Date 5/31/2023).

The three-year approval will allow CDC to continue to monitor states' program planning and delivery of public health activities and the programs' collaboration with health care systems through a new five-year cooperative agreement—A Comprehensive Public Health Approach to Asthma Control through Evidence-Based Interventions (CDC–RFA–EH19–1902).

The goal of this data collection is to provide NCEH with routine information about the activities and performance of the State, local and Territorial recipients funded under the NACP through an annual reporting system. NACP requires recipients to report activities related to partnerships, infrastructure, evaluation and interventions to monitor the programs' performance in reducing the burden of asthma. AIRS also includes two forms to collect aggregate emergency department (ED) visits and hospital discharge (HD) data from recipients.

AIRS was first approved by OMB in 2010 to collect data in a web-based system to monitor and guide participating State health departments. Since implementation in 2010, AIRS, and the technical assistance provided by CDC staff, have provided States with uniform data reporting methods and linkages to other States' asthma program information and resources. Thus, AIRS has saved State resources and staff time when asthma programs embark on asthma activities similar to those conducted elsewhere.

Over the past three years, AIRS data has been used to accomplish a multitude of activities centered around transparent communication and informed decision-making for State asthma programs. AIRS data served as a resource to address congressional, departmental, and institutional inquiries, along with enabling inquiries surrounding interventions for heavily burdened populations based on geographic areas, age groups, and other variables of interest. Additionally, the AIRS data has allowed our team to provide timely feedback on performance, both independent and performance relative to others, through the distribution of two written reports and several presentations. Furthermore, AIRS data has allowed for the customization of technical assistance for materials addressing implementation challenges and barriers. As the current cooperative agreement cycle comes to an end, the AIRS data has provided key information in helping to shape the next program announcement.

There will be no cost to respondents other than their time to complete the PM Reporting Tool, ED Visits Reporting Form, and HD Reporting Form, on an annual basis. The estimated annualized time burden is 105 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Funded Asthma Program Recipients	Performance Measures Reporting Tool	30	1	150/60
	Emergency Department Visits Reporting Form.	30	1	30/60
	Hospital Discharge Reporting Form	30	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–10743 Filed 5–18–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–23CA]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Vector Surveillance and Control Assessment: Mosquito and Tick Capacities'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 18, 2023 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Vector Surveillance and Control Assessment: Mosquito and Tick Capacities—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Vector-borne diseases (VBDs) cause significant morbidity and mortality each year in the United States. From 2004–2019, over 800,000 cases of diseases carried by ticks, mosquitoes, and fleas have been reported from U.S. states and territories to the Centers for Disease Control and Prevention (CDC). The number of reported cases has been increasing annually with two major trends: a steady increase in tick-borne diseases and increasing intermittent outbreaks of mosquito-borne arboviruses. CDC expects that the number of vector-borne disease cases in the U.S. will likely increase and that the pathogens have the potential to spread locally, particularly if vector control measures are not taken.

The purpose of this collection is to assess the current capabilities of local vector control organizations to respond to VBDs in their jurisdictions. Specifically, the data collection will: (1) assess existing vector surveillance capabilities at the local level; (2) obtain information on current mosquito abatement and pesticide licensing practices; (3) identify the current technical assistance needs of local vector control organizations; and (4) gather information on current tick programming. CDC and its implementing partner, the National Association of City and County Health Officials, will use the resulting data to inform and support future vector control activities and initiatives at the local level.

CDC requests OMB approval for an estimated 167 total annualized burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Environmental Science and Protection Technicians.	Control Program Questionnaire	1,109	1	9/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–10746 Filed 5–18–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Federal Case Registry (Office of Management and Budget #0970–0421)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is requesting from the Office of Management and Budget to extend approval of the Federal Case Registry (FCR) for an additional three years. The current approval expires November 30, 2023. OCSE is proposing minor changes to punctuation, formatting, grammar, clarity, and spacing to enable easier completion of the form.

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 *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The FCR is a national database of information pertaining to child support cases processed by state child support agencies, referred to as ''IV–D'' cases, and non-IV–D support orders privately established or modified by courts or tribunals on or after October 1, 1998. FCR information is comprised of child support orders and case information from each State Case Registry (SCR). The FCR automatically compares new SCR submissions to existing FCR information and to wage and employment information in the National Directory of New Hires (NDNH). The Federal Parent Locator Service notifies state agencies if an IV–D case participant in the state matches a participant in an IV–D or non-IV–D case in another state and supplies any matched wage and employment information. Matches enable state agencies to locate parties that live in different states, to establish, modify, or enforce child support obligations; to establish paternity; to enforce state law regarding parental kidnapping; and to establish or enforce child custody or visitation determinations. The FCR instrument, Appendix G: Input Transactions Layout, contains minor changes to punctuation, formatting, grammar, clarity, and spacing to enable easier completion of the form.

Respondents: State child support enforcement agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Annual burden hours per response	Annual burden hours
Appendix G: Input Transactions Layout	54	406	0.0333	730

Estimated Total Annual Burden Hours: 730.

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: 42 U.S.C. 653(h); 42 U.S.C. 654a(e); 42 U.S.C. 654a(f)(1).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10759 Filed 5–18–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Objective Work Plan/On-Going Progress Report (Office of Management and Budget #0970–0452)

AGENCY: Administration for Native Americans, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families' (ACF) Administration for Native Americans (ANA) is requesting a three-year extension to the Ongoing Progress Report (OPR) and the Objective Work Plan (OWP) (Office of Management and Budget (OMB) #0970–0452, expiration September 930, 2023). There are no changes requested to the forms.

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 *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: There are no changes proposed to the OPR or OWP.

The OPR information collection is conducted in accordance with section 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects. The information in the OPR is collected on a semi-annual basis to monitor the performance of grantees and better gauge grantee progress.

The OWP information collection is conducted in accordance with 42 U.S.C. of the Native American Programs Act of 1972, as amended. This collection is necessary to evaluate applications for financial assistance and determine the relative merits of the projects for which such assistance is requested, as set forth in section 806 [42 U.S.C. 2991–d 1](a)(1). The information in the OWP is collected at time of application to detail the project goal, objectives, activities, and outputs.

Respondents:

Federally and state recognized tribes, Native Pacific Islanders, Tribal colleges and universities, Native non-profits, and consortia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Objective Work Plan	300	1	3	900	300
On-Going Progress Report	200	2	1	400	133

Estimated Total Annual Burden Hours: 433.

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: Section 806 [42 U.S.C. 2991d–1](a)(1) and section 811 [42 U.S.C. 2992].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10733 Filed 5–18–23; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of the Deputy Assistant Secretary for Early Childhood Development, Office of Head Start, Office of Child Care; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families (ACF) has reorganized the Office of Early Childhood Development (ECD), the Office of Head Start (OHS), and the Office of Child Care (OCC).

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Associate Deputy Assistant Secretary, Office of Early Childhood Development, 330 C Street SW, Washington, DC 20201, (202) 205–7378.

SUPPLEMENTARY INFORMATION: This reorganization removes the Office of the Deputy Assistant Secretary for Early Childhood Development (ODAS–ECD) from the Immediate Office of the Assistant Secretary (IOAS) and creates the Office of Early Childhood Development (ECD). The ECD Division of Policy and Budget will be renamed the Policy and Strategy Division.

This notice removes the Division of ECD Research, Analysis, and Communications and places the research and analysis functions in the Policy and Strategy Division and the communication functions into the Policy and Strategy Division and the Immediate Office of Early Childhood Development. It removes the ECD Division of Interagency and Special Initiatives and places the functions in the Policy and Strategy Division.

In addition to the Policy and Strategy Division, this reorganization creates three new divisions within ECD: the Tribal Early Childhood Division, the Budget Division, and the Administrative Operations Division.

This notice removes the ECD Division of Comprehensive Services and Training and Technical Assistance and places the functions into the newly created Training and Technical Assistance Division in OCC and the newly created Comprehensive Services and Training and Technical Assistance Division in OHS.

Within OHS, this reorganization creates the Comprehensive Services and Training and Technical Assistance Division. It removes the Budget Execution Division and moves its functions in its entirety to the newly created Budget Division within ECD. It also removes the budget execution functions from the Office of the Director of OCC and moves the functions to the Budget Division within ECD. Within OCC, it creates the Training and Technical Assistance Division.

Within OHS and OCC, it removes the administrative teams from the Office of the Directors and places them in the newly created Administrative Operations Division within ECD. Within OCC, the Division of Planning, Data, and Policy is renamed the Policy, Data, and Planning Division. Within OHS, this reorganization creates the Oversight Division. It renames the Division of Policy, Oversight, and Planning to the Policy and Planning Division and the Division of Grants is renamed the Competitive Grants Division.

This notice amends Part K of the Statement of Organization Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF): Chapter K, Administration for Children and Families, as last amended 83 FR 24119–22 (May 24, 2018); Chapter KA, Office of the Assistant Secretary, as last amended Chapter KU, Office of Head Start (OHS), as last amended 7346–7351, February 11, 2016; Chapter KV, Office of Child Care (OCC) as last amended 7346–7351, February 11, 2016.

I. Amend Chapter K, Administration for Children and Families, as Follows

A. Delete Section K.10, Administration for Children and Families, in its entirety and replace with the following:

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (HHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary, the Chief of Staff, the Deputy Assistant Secretary for Administration, the Deputy Assistant Secretary for Policy, the Deputy Assistant Secretary for Native American Affairs and Commissioner, Administration for Native Americans, the Deputy Assistant Secretary for External Affairs, and Staff and Program Offices. ACF is organized as follows:

Office of the Assistant Secretary for Children and Families (KA)
Administration on Children, Youth and Families (KB)
Administration for Native Americans (KE)
Office of Child Support Enforcement (KF)
Office of Community Services (KG)
Office of Family Assistance (KH)
Office of Regional Operations (KJ)
Office of Planning, Research and Evaluation (KM)
Office of Communications (KN)
Office of the Deputy Assistant Secretary for Administration (KP)
Office of Refugee Resettlement (KR)
Office of Legislative Affairs and Budget (KT)
Office of Head Start (KU)
Office of Child Care (KV)
Office of Human Services Emergency Preparedness and Response (KW)
Office of Early Childhood Development (KY)

B. Establish Chapter KY, Office of Early Childhood Development:

KY.00 Mission. The mission of the Office of Early Childhood Development (ECD) is to advance an early childhood field that meets the developmental needs of children and their families in communities across the country. To achieve this mission, ECD advises the Secretary, through the Assistant Secretary for Children and Families, in formulating policy, budgets, implementation strategies, and new initiatives on matters related to early childhood programs and services under the purview of ACF and in collaboration with other operating divisions. ECD provides executive direction and management strategy to OCC and OHS.

KY.10 Organization. ECD is headed by the Deputy Assistant Secretary for Early Childhood Development (DAS–ECD) who reports directly to the Assistant Secretary for Children and Families. The Deputy Assistant Secretary is the primary policy advisor to the Assistant Secretary on all early childhood policy. The Associate Deputy Assistant Secretary for ECD and the Directors of the Office of Child Care and the Office of Head Start report directly to the Deputy Assistant Secretary.

Office of Early Childhood Development (KY)
Policy and Strategy Division (KYA)
Tribal Early Childhood Division (KYB)
Budget Division (KYC)
Administrative Operations Division (KYD)

KY.20 Functions.

A. Office of Early Childhood Development (KY): The Office of Early Childhood Development is responsible for providing leadership, planning, and oversight of early childhood systems across Head Start, child care, and other early childhood service delivery organizations. ECD also coordinates policy, legislative, program guidance, regulatory, and budgetary documents across the Office of Child Care (OCC), the Office of Head Start (OHS), Preschool Development Grants Birth to Five, and Tribal MIECHV.

The Associate Deputy Assistant Secretary for Early Childhood Development (ADAS) reports to and assists the Deputy Assistant Secretary in carrying out the responsibilities of ECD and serves as a liaison to the Directors and career leadership of OCC and OHS. The ADAS is a career senior executive service position, and the position also functions as the alter ego to the DAS. The ADAS performs the duties of the Deputy Assistant Secretary when the DAS is absent. Division Directors within ECD report directly to the ADAS.

B. Policy and Strategy Division (KYA): The Policy and Strategy Division is responsible for advising the DAS and ADAS on matters relating to early childhood policy and strategies, regulation development, legislative issues, and budget formulation to coordinate early childhood programs, improve services to children and families, and support the early childhood workforce; the coordination of policies and regulations, governing early childhood programs with the potential for cross-programmatic impact; the coordination of strategic plans and goals, development of cross-cutting and interagency policy and strategic problem solving; the coordination and development of cross-cutting budget and legislative proposals across ECD, OHS, and OCC; and administering cross-cutting early childhood programs including Preschool Development Grants Birth to Five.

C. Tribal Early Childhood Division (KYB): The Tribal Early Childhood Division is responsible for advising the DAS and the ADAS on matters relating to tribes and tribal early childhood programs, supporting collaboration across early childhood programs as it relates to Tribes, and engagement with Tribal leaders. The division administers the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program.

D. Budget Division (KYC): The Budget Division is responsible for budget execution and budget analysis to inform decision making, spending plans, and proposals across ECD, OHS, and OCC with the leadership of each office. The budget team also ensures budgetary resources are used in a manner consistent with appropriations and are not over spent or obligated beyond appropriate limits, prepares financial reports, and reviews financial operating plans. The Budget Division will coordinate closely with staff with budget formulation, planning, and policy responsibilities in OCC, OHS, and ECD.

E. Administrative Operations Division (KYD): The Administrative Operations Division is responsible for providing administrative and human resource support to ECD, OCC, and OHS. The division is responsible for recruitment, hiring and onboarding, timekeeping and personnel actions. In addition, the division handles travel administration, professional development opportunities, and equipment and supplies management. The Administrative Operations Division coordinates closely with the OCC and OHS Deputy Directors and Associate Deputy Directors to ensure the administrative needs for each program office are met.

II. Delete Chapter KU, Office of Head Start, in its Entirety and Replace it With the Following

KU.00 Mission. The Office of Head Start (OHS) has primary responsibility for the overall direction, policy, budget planning and development, and administration and oversight of Head Start program operations authorized under the Head Start Act. OHS identifies legislative and budgetary requirements; identifies areas for research, demonstration, and developmental activities; presents operational planning objectives and initiatives relating to Head Start to the Deputy Assistant Secretary for Early Childhood Development; and oversees the progress of approved activities.

KU.10 Organization. OHS is headed by a Director, who reports to the Deputy Assistant Secretary for Early Childhood Development. OHS is organized as follows:

Office of the Director (KUA)
Program Operations Division (KUB)
Head Start Regional Offices (KUBDI–XII)
Policy and Planning Division (KUE)
Competitive Grants Division (KUF)
Contracts Division (KUG)
Oversight Division (KUH)
Comprehensive Services, Training and Technical Assistance Division (KUI)

KU.20 Functions

A. Office of the Director (KUA): The Office of the Director (OD) is responsible for leading the office to ensure OHS fulfills its statutory responsibilities and programmatic objectives. The Director serves as the primary official responsible for all aspects of the administration of discretionary grant programs providing Head Start services. The OD has overall responsibility for policy and budget development specific to Head Start, strategic planning and setting operational goals, and management and oversight of the Head Start program. The OD also responds to inquiries from the public and governmental and non-governmental leaders.

The Deputy Director reports to and assists the Director in carrying out the responsibilities of OHS and performs the duties of the Director when absent. The Deputy Director and Associate Deputy Director of Head Start collaborate to support the mission of Head Start; manage the day-to-day operations of OHS; share supervision and management responsibilities for the OHS Division Directors, and other OD staff; and coordinate with and provide direction to the ECD Budget and Administrative Operations Divisions to manage the budget and administrative needs of OHS. The Associate Deputy Director reports to the Deputy Director and performs the duties of the Deputy Director when the Deputy Director is absent.

B. Program Operations Division (KUB): The Program Operations Division is responsible for providing oversight, direction, and guidance to the Head Start Regional Offices, providing ongoing management of national Head Start program operations, and managing Head Start program-level data systems. The division serves as OHS liaison to the ACF Office of Grants Management.

C. Head Start Regional Offices (KUBDI–XII): The Head Start Regional Offices are each headed by a Regional Program Manager (RPM). Head Start Regional Offices are responsible for administering funding, ongoing oversight and monitoring, and training and technical assistance to the grant recipient agencies that provide services to Head Start children and families; providing ongoing management of Regional Head Start program operations, including State Collaboration grants, and liaising within each Region to the Office of Child Care and the Office of Grants Management. Regions I through X are located in the ACF geographical regions. Region XI, American Indian/Alaska Native Head Start, located at the OHS central office, administers grants for American Indian and Alaskan Native Head Start grantees. Region XII, Migrant and Seasonal Head Start, located at the OHS central office, administers grants for agencies that serve the children and families of migrant and seasonal farm workers.

D. Policy and Planning Division (KUE): The Policy and Planning Division is responsible for overseeing the development and issuance of policy, regulations, program guidance, and documents governing Head Start. The division is responsible for legislative issues and budget formulation in coordination with ECD and consistent with ACF early childhood priorities. The division oversees activities for implementation of major policy, legislative regulatory and budget new initiatives and prepares materials in response to Congressional inquiries.

E. Division of Competitive Grants (KUF): The Competitive Grants Division is responsible for overseeing matters related to competitive discretionary and cooperative agreement funding opportunities, managing all competitive discretionary grant processes, and managing OHS interim grantees and grant recipient transitions. The division works with other ACF offices on matters related to competitive discretionary funding.

F. Contracts Division (KUG): The Contracts Division is responsible for ongoing oversight and monitoring of OHS contracts and providing expert technical assistance and guidance to OHS contract officer representatives on all matters related to procurement and acquisition. The division serves as a liaison to the Contracts Offices.

G. Oversight Division (KUH): The Oversight Division is responsible for activities to determine Head Start programs' compliance, quality improvement, and performance with all applicable requirements and regulations and conducting data analyses on monitoring outcomes. The division responds to inquiries from the Office of Inspector General (OIG) and the Government Accountability Office (GAO).

H. Comprehensive Services, Training and Technical Assistance Division (KUI): The Comprehensive Services, Training, and Technical Assistance (CSTTA) Division is responsible for: providing content expertise and leadership on comprehensive services; overseeing the training and technical assistance (TTA) system, including coordination and oversight of TTA cooperative agreements, and contracts, and providing expertise, consultation, and coordination to the Head Start Regional Offices. The division translates research to practice and evaluation by collaborating with other HHS offices and the broader scientific community.

III. Delete Chapter KV, Office of Child Care, in its Entirety and Replace With the Following

KV.00 Mission. The Office of Child Care (OCC) has primary responsibility for the overall direction, policy, implementation, budget planning and development, and oversight of child care program operations authorized under the Child Care and Development Block Grant (CCDBG) and section 418 of the Social Security Act. OCC supports state, tribal, and territorial grantees' efforts to provide child care subsidies to families with low incomes, improve the quality of child care for all children, support a high-quality and well-compensated workforce, and support a strong child care system able to meet the needs of children and families. OCC provides leadership and coordination for child care issues within ACF, HHS, and with relevant federal, state, local, and tribal governmental and non-governmental organizations.

KV.10 Organization. OCC is headed by a Director who reports to the Deputy Assistant Secretary for Early Childhood Development. OCC is organized as follows:

Office of the Director (KVA)
Training and Technical Assistance Division (KVA1)
Program Operations Division (KVA2)
Oversight and Accountability Division (KVA3)
Policy, Data, and Planning Division (KVA4)
Child Care Regional Offices (KVADI–X)

KV.20 Functions.

A. Office of the Director (KVA): The Office of the Director (OD) is responsible for leading the Program Office to ensure OCC fulfills its statutory responsibilities and programmatic objectives. The OD is responsible for the overall management, oversight, and policy and budget development specific to child care programs and for the supervision of the OCC Division Directors. The OD is also responsible for strategic planning and setting operational goals, planning initiatives to support strong implementation of CCDF and other initiatives that support a child care sector that meets the developmental needs of children and supports families and child care providers. The OD also responds to inquiries from the public and governmental and non-governmental leaders.

The Deputy Director and Associate Deputy Director report to the Director and manage the day-to-day operations of OCC; share supervision and management responsibilities for the OCC Division Directors, the Director of Regional Operations, and other OD staff; coordinate with and provide direction to the ECD Budget and Administrative Operations divisions to manage the budget and administrative needs of OCC; assist the Director in carrying out the duties of the OD; and perform the duties of the Director when absent.

B. Training and Technical Assistance Division (KVA1): The Training and Technical Assistance Division is responsible for overseeing the TTA system including coordination and oversight of technical assistance grants, cooperative agreements, and contracts. The division also oversees publications to support CCDF lead agencies and OCC priorities and coordinates with the other divisions in OCC on content related to program implementation, monitoring, policy, interagency agreements, and websites.

C. Program Operations Division (KVA2): The Program Operations Division is responsible for supporting the development, management, and oversight of CCDF plans, plan amendments, and waiver requests, to support compliance with federal law and regulation. The division works in partnership with regional program staff to facilitate responses to issues and questions on program implementation, policy, and other issues. The division is also responsible for analyzing information related to grantee program implementation.

D. Oversight and Accountability Division (KVA3): The Oversight and Accountability Division is responsible for monitoring grantees for compliance in the implementation of CCDF plans, and for programmatic and fiscal compliance with federal law, policies, and regulations. The division manages the program integrity and accountability oversight program, including audits, improper payments, error rates, and corrective actions. The division responds to inquiries from the Office of Inspector General (OIG) and Government Accountability Office (GAO).

E. Policy, Data, and Planning Division (KVA4): The Policy, Data, and Planning Division is responsible for overseeing development and issuance of policies, regulations, and other policy guidance. The division is responsible for legislative issues and budget formulation in coordination with ECD and consistent with ACF early childhood priorities. The division oversees activities for implementation of major policy, legislative, regulatory and budget new initiatives and prepares materials in response to Congressional inquiries. The division also oversees collection of state, territory, and tribal grantee data and reports and reviews and analyzes grantee data and performance measures.

F. Child Care Regional Offices (KVADI–X): Each of the ten OCC Regional Offices is headed by an OCC Regional Program Manager (RPM) who reports to the Director of Regional Operations within the OCC Office of the Director. OCC Regional Offices are responsible for ongoing oversight and monitoring, and technical assistance and working to resolve issues to bring all Lead Agencies in their region in full compliance with federal law, regulations, and policy. The RPM is responsible for liaising within each Region to the Office of Head Start and maintaining relationships with state, territory, tribal, and local officials.

V. Continuation of Policy

Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within ACF, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

VI. Delegation of Authority

All delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them, or their successors, pending further re-delegations, provided they are consistent with this reorganization.

VII. Funds, Personnel, and Equipment

Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2023–10072 Filed 5–18–23; 4:15 pm]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Center for States Evaluation Ancillary Data Collection (Office of Management and Budget #0970–0501)

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration on Children, Youth and Families, Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is requesting approval for a revision of a currently approved information collection, the Center for States Evaluation Ancillary Data Collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of section 3506(c)(2)(A) 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 *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Evaluation of the Child Welfare Capacity Building Collaborative, Center for States is sponsored by the ACF Children's Bureau (CB). The purpose of this evaluation is to respond to a set of cross-cutting evaluation questions posed by the CB. This existing information collection is an ancillary part of a larger data collection effort being conducted for the evaluation of the Child Welfare Capacity Building Collaborative. This notice details a group of instruments that are specific only to the Center for States. The instruments focus on (1) evaluating an innovative approach to engaging professionals in networking and professional development through virtual expos, (2) understanding fidelity to and effectiveness of the Center's Capacity Building Model, (3) capturing information about individualized support to jurisdictions, and (4) enhancing the Center's support focused on equity and lived experience. To date, this data collection and resulting findings have been used to (a) assess satisfaction with service delivery and make adjustments to improve quality, (b) support professional development of child welfare professionals through improving the virtual expo experience, particularly during the pandemic, and (c) support provision of effective and high-quality individualized support to jurisdictions.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Annual average burden hours per response	Total annual burden hours
Child Welfare Virtual Expo Exit Survey	300	1	0.083	25
Child Welfare Virtual Expo Registration Form	3,000	1	0.05	150
Jurisdiction Lead Interview	40	1	1	40
Jurisdiction Lead Observation Debrief Protocol	25	1	0.25	6
Jurisdiction Lead Survey Related to Lived Experience	30	1	0.25	8
Outcomes of and Satisfaction with Tailored Services Survey Appended Items (Section 4)	40	1	0.05	2
Peer Group Focus Group Protocol	150	1	1	150
Total				381

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: Section 203 of section II: Adoption Opportunities of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5113).

Molly B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10758 Filed 5–18–23; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by July 18, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Christine Le, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 301–796–2398, *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on February 17, 2023 (88 FR 10354). This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Baloxavir marboxil.
Belumosudil mesylate.
Belzutifan.
Bimatoprost.
Brincidofovir (multiple reference listed drugs).
Cabotegravir.
Casimersen.
Celecoxib; Tramadol hydrochloride.
Citric acid; Lactic acid; Potassium bitartrate.
Clobetasol propionate.
Defibrotide sodium.
Difelikefalin acetate.
Finerenone.
Givosiran sodium.
Inclisiran sodium.
Loxapine.
Maribavir.
Naloxone hydrochloride.
Odevixibat.
Pentoxifylline.
Piflufolastat f-18.
Sirolimus.
Voxelotor.

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Azelastine hydrochloride; Fluticasone propionate.
Baloxavir marboxil.
Cabozantinib S-malate (multiple reference listed drugs).
Doxepin hydrochloride.
Fluticasone furoate.
Fluticasone propionate.
Formoterol fumarate.
Formoterol fumarate; Mometasone furoate.
Glycopyrrolate.
Glycopyrrolate; Indacaterol maleate.
Indacaterol maleate.
Ivacaftor.
Lidocaine.
Lithium carbonate (multiple reference listed drugs).
Mometasone furoate.
Paliperidone palmitate.
Rasagiline mesylate.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that these draft guidances contain no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Electronic Access

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

Dated: May 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10710 Filed 5–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Substance Use Disorder Treatment and Recovery Loan Repayment Program and the Pediatric Specialty Loan Repayment Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than June 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Substance Use Disorder Treatment and Recovery Loan Repayment Program and the Pediatric Specialty Loan Repayment Program, OMB No. 0906–0058—Revision

Abstract: The Consolidated Appropriations Act, 2023 included $40,000,000 for the Substance Use Disorder Treatment and Recovery (STAR) Loan Repayment Program (LRP). This funding will allow HRSA to provide the repayment of education loans for individuals working in a full-time substance use disorder treatment job that involves direct patient care in either a Health Professional Shortage Area (HPSA) designated for Mental Health, or a county where the average drug overdose death rate exceeds the national average. The Further Consolidated Appropriations Act, 2022 and the Consolidated Appropriations Act, 2023 included $5,000,000 and $10,000,000, respectively, for HRSA to award eligible individuals through the Pediatric Specialty LRP. This funding will allow HRSA to provide the repayment of education loans to pediatric medical subspecialist, pediatric surgical specialist, and child and adolescent mental and behavioral health care providers working full-time in or serving a HPSA, medically underserved area (MUA), or medically underserved population (MUP). This information collection request adds the Pediatric Specialty LRP and relevant forms.

The Department of Health and Human Services agrees to make payment of up to $250,000 for the repayment of eligible educational loans in return for 6 years of service obligation through the STAR LRP, and up to $100,000 in return for 3 years of service obligation through the Pediatric Specialty LRP. The forms used by the STAR LRP and the Pediatric Specialty LRP include the following: the LRP Application, the Authorization for Disclosure of Loan Information form, the Privacy Act Release Authorization form, and the electronic Employment Verification form, if applicable. The forms collect information needed for selecting participants and repaying eligible educational loans.

Eligible disciplines for the STAR LRP and the Pediatric Specialty LRP include, but are not limited to physicians, psychologists, psychiatric nurses, marriage and facility therapists, social workers, counselors, and substance use disorder counselors. Additional providers that are exclusively eligible for the Pediatric Specialty LRP include pediatric medical subspecialty, pediatric surgical specialty, and child and adolescent mental and behavioral health care providers.

Eligible facilities or sites for the STAR LRP and Pediatric Specialty LRP programs include, but are not limited to: School-Based Clinics, Community Health Centers, Inpatient Programs/Rehabilitation Centers, Federally Qualified Health Centers, Centers for Medicare & Medicaid Services-approved Critical Access Hospitals, American Indian Health Facilities (Indian Health Service Facilities, Tribally-Operated 638 Health Programs, and Urban Indian Health Programs), inpatient rehabilitation centers, and psychiatric facilities. STAR LRP facilities must be located in a mental health HPSA or a county where the average drug overdose death rate exceeds the national average. Pediatric Specialty LRP sites must provide pediatric medical subspecialty care, pediatric surgical specialty care, or child and adolescent mental and behavioral health care in or to a HPSA, MUA, or MUP. HRSA will approve and activate sites for the Pediatric Specialty LRP if:

(1) The facility is already approved for the National Health Service Corps, Nurse Corps, or STAR LRP and located in or serves a HPSA, MUA, or MUP; or

(2) During the Pediatric Specialty LRP application cycle, the facility submits to HRSA the site type and the point of contact(s) to *PS_LRP_Sites@hrsa.gov*.

HRSA will review and approve new facilities during the respective application cycle for the STAR LRP and the Pediatric Specialty LRP. New facilities must submit to HRSA the facility type and the recruitment contact(s). HRSA will use the information collected to determine eligibility of the facility for the assignment of health professionals and to verify the need for clinicians. Note: Despite the similarity in the titles, the STAR LRP is not the existing National Health Service Corps Substance Use Disorder LRP (OMB #0915–0127), which is authorized under Title III of the Public Health Service Act. The STAR LRP is authorized under Title VII of the Public Health Service Act and has different service requirements, loan repayment protocols, and authorized employment facilities.

Need and Proposed Use of the Information: The need and purpose of this information collection is to obtain information that is used to assess an applicant's eligibility and qualifications for the STAR LRP and the Pediatric Specialty LRP, and to obtain information for eligible facilities or sites. Clinicians interested in participating in the STAR LRP or the Pediatric Specialty LRP must apply to the applicable program to participate. Additionally, health care facilities located in a high overdose death rate area or mental health HPSAs must submit the facility type and the site point(s) of contact(s) for HRSA to determine the facility's eligibility to participate in the STAR LRP. Similarly, sites located in or serving a HPSA, MUA, or MUP must submit the site type and the site point(s) of contact(s) for HRSA to determine the sites' eligibility to participate in the Pediatric Specialty LRP. The STAR LRP and the Pediatric Specialty LRP application asks for personal, professional, and financial information needed to determine the applicant's eligibility to participate in either of the programs. In addition, applicants must provide information regarding the loans for which repayment is being requested.

A 60-day notice published in the **Federal Register** on March 8, 2023, vol. 88, No. 45; pp. 14373–74. There were no public comments.

Likely Respondents: Licensed medical, mental, and behavioral health providers who are employed or seeking employment and are interested in serving underserved populations; and health care facilities or sites interested in participating in the STAR LRP and/or the Pediatric Specialty LRP and becoming an approved facility or site.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the tables below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS FOR THE STAR LRP

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
STAR LRP Application	3,200	1	3,200	.50	1,600
Authorization for Disclosure of Loan Information Form	3,200	1	3,200	.50	1,600
Privacy Act Release Authorization Form	3,200	1	3,200	.50	1,600
Employment Verification Form	3,200	1	3,200	.50	1,600
Total	12,800		12,800		6,400

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS FOR THE PEDIATRIC SPECIALTY LRP

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Pediatric Specialty LRP Application	500	1	500	.50	250
Authorization for Disclosure of Loan Information Form	500	1	500	.50	250
Privacy Act Release Authorization Form	500	1	500	.50	250
Employment Verification Form	500	1	500	.50	250
Total	2,000		2,000		1,000

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–10692 Filed 5–18–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Given the capacity constraints of the venue, the public is strongly encouraged to attend virtually via NIH videocast. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, 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/.*

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: Advisory Committee to the Director, National Institutes of Health.

Date: June 8, 2023.

Open: 9:00 a.m. to 4:45 p.m.

Agenda: Performing the Duties of the NIH Director's Report; NIH Public Access Plan; Cancer Moonshot; Addressing the Mental Health Crisis through Research; Addressing the Public Health Threat of Post-Acute Sequelae of SARS CoV–2 Infection (PASC)—NIH RECOVER Initiative: Briefing for the Advisory Council to the Director (ACD); The Foundation for the National Institutes of Health (FNIH); Other Business of the Committee.

Date: June 8, 2023.

Closed: 4:55 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Date: June 9, 2023.

Open: 9:00 a.m. to 3:00 p.m.

Agenda: HeLA Genome Data Access Working Group: Data Access Requests; NIH-wide Collaborative Initiative on Climate Change and Health; Clinical Trial Stewardship; Accessibility Update; Update from the ACD Working Group on Catalyzing the Development and Use of Novel Alternative Methods to Advance Biomedical Research; Update from the ACD Working Group on Re-envisioning NIH-Supported Postdoctoral Training; Other Business of the Committee.

Place: National Institutes of Health, Building 1, Wilson Hall, One Center Drive, Bethesda, MD 20892.

Contact Person: Cyndi Burrus-Shaw, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–2433, *shawcy@od.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.

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: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 15, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10689 Filed 5–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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: NIDCR Special Grants Review Committee.

Date: June 29–30, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas John O'Farrell, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892, 301–402–8559, *tom.ofarrell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 15, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10656 Filed 5–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via web conference on June 13, 2023, from 9:30 a.m. EST to 5:00 p.m. EST.

The board will meet in open-session June 13, 2023, from 9:30am EST to 4:00pm EST to discuss the Mandatory Guidelines for Federal Workplace Drug Testing Programs, the history of the Drug Free Workplace Program and the Comprehensive Review, updates from the Department of Transportation, the Nuclear Regulatory Commission, and the Department of Defense, as well as a discussion regarding the Food and Drug Administration approval process for drug testing assays and devices. Presentations include one by Faye Caldwell on Changing Trends in Drug Testing and another by Dr. Edward Cone on Preliminary Findings Comparing the Pharmacokinetics and Pharmacodynamics of Delta-8–THC to Delta-9-THC in Human Volunteers.

The board will meet in closed session on June 13, 2023, from 4:15 p.m. EST to 5:00 p.m. EST to hear an update on the Hair Proficiency Testing Program. June 13, 2023, from 4:15 p.m. EST to 5:00 p.m. EST meeting is closed to the public, as determined by the Assistant Secretary for Mental Health and Substance Use, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, section 10(d).

Meeting registration information can be completed at *https://snacregister.samhsa.gov/.* Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, *https://www.samhsa.gov/about-us/advisory-councils/meetings,* or by contacting the Designated Federal Officer, Lisa Davis.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention. Drug Testing Advisory Board.

Dates/Time/Type: June 13, 2023, from 9:30 a.m. EST to 4:00 p.m. EST: OPEN; June 13, 2023, from 4:15 p.m. EST to 5:00 p.m. EST: CLOSED.

Place: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

To Submit Comments: Please send comments in writing at least 7 days prior to the meeting to the to the following email: *DFWP@samhsa.hhs.gov.*

Contact: Lisa S. Davis, M.S, Social Science Analyst, Center for Substance Abuse Prevention, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (240) 276–1440, Email: *Lisa.Davis@samhsa.hhs.gov.*

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–10783 Filed 5–18–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0018]

Faith-Based Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of public meeting of the Faith-Based Security Advisory Council (FBSAC).

SUMMARY: The Faith-Based Security Advisory Council (FBSAC) will hold a public meeting on Tuesday, June 6, 2023. The meeting will be open to the public via web conference.

DATES: The meeting will take place from 10 a.m. ET to 12 p.m. ET on Tuesday, June 6, 2023. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The FBSAC meeting location will be the United States Coast Guard Headquarters, Ray Evans Conference Room B. Members of the public interested in participating may do so by following the process outlined below. The public will be in listen-only mode except for the public comment portions of the meeting.

To ensure your comments are received by the Council members before the meeting, submit your written comments no later than June 5, 2023. Comments must be identified by Docket No. DHS–2023–0018 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FBSAC@hq.dhs.gov.* Include Docket No. DHS–2023–0018 in the subject line of the message.
- *Mail:* Sameer Hossain, Designated Federal Officer of the Faith-Based Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr., Ave. SE, Washington, DC 20528.

The FBSAC is committed to ensuring that all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Mr. Sameer Hossain at 202–891–2876.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2023–0018,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2023–0018,'' ''Open Docket Folder'' to view the comments.

FOR FURTHER INFORMATION CONTACT: Sameer Hossain, Designated Federal Officer, Faith-Based Security Advisory Council, Office of Partnership and Engagement, U.S. Department of Homeland Security at *FBSAC@hq.dhs.gov* or 202–891–2876.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5 U.S.C. ch. 10). The Committee operates under the provisions of the *Federal Advisory Committee Act.*

The FBSAC provides organizationally independent, strategic, timely, specific, and actionable advice to the Secretary through the Assistant Secretary for OPE, who serves as the DHS Faith-Based Organizations Security Coordinator on security and preparedness matters related to places of worship, faith communities, and faith-based organizations. The FBSAC serves strictly as an advisory body with the purpose of providing advice upon the request of the Secretary. The meeting will include:

(1) Remarks from Senior DHS leaders,

(2) Receipt, Discussion, and vote on three draft reports from the following: 1. Information Sharing Subcommittee; 2. DHS Grants and Resources Subcommittee; and 3. Building Partnerships Subcommittee. Additional information on the subcommittees can be found on the Faith-Based Security Advisory Council's website *www.dhs.gov/faith-based-security-advisory-council.*

Members of the public will be in listen-only mode except during the public comment sessions. Members of the public may register to participate in this Council meeting via web conference under the following procedures. Each individual must provide their full legal name and email address no later than 5:00 p.m. ET on Monday, June 5, 2023 to Sameer Hossain of the Council via email to *FBSAC@hq.dhs.gov* or via phone at 202–891–2876. Members of the public who have registered to participate will be provided the weblink after the closing of the public registration period and prior to the start of the meeting.

Dated: May 16, 2023.

Nicole M. Rosich,

Alternate Designated Federal Officer, Faith-Based Security Advisory Council, U.S. Department of Homeland Security.

[FR Doc. 2023–10757 Filed 5–18–23; 8:45 am]

BILLING CODE 9112–FN–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: June 6, 2023, ET, 10:00 a.m.–11:30 a.m.

PLACE: Via Zoom.

STATUS: Meeting of the Board of Directors, open to the public.

MATTERS TO BE CONSIDERED:

- Call to Order
- Overview of Meeting Rules by General Counsel
- Approval of Minutes from January 23, 2023 meeting
- Introductory Remarks by President & CEO
- Management Team updates on Infrastructure, Country Programming, Learning Initiatives and External Engagements
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117.

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, (202) 683–7117.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2023–10852 Filed 5–17–23; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[WBS: GX.23.DJ73.U9K10.00, OMB Control Number 1028–0131]

Agency Information Collection Activities: Water Resources Management—Institutional Resilience, Hazards Planning, and Data Delivery Needs Information Collection

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA) the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 18, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192, or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0131 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Katrina Alger by email at *kalger@usgs.gov* or by telephone at 303–236–5031. 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 PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract:

The United States is facing growing challenges related to the availability of water due to shifting demographics, aging water-delivery infrastructure, and the impacts of climate change, which include flood and drought. Working with incomplete knowledge, managers must consider the needs of various demographic groups and economic sectors when making management decisions as well as when responding to emergencies. We will collect information regarding the decision-making process and data and data-format needs to support daily, long-term, and emergency-response decision-making. Information will also be sought on the resilience of water-resource management institutions. A lack of resilience within water institutions can lead to poor decision-making and outcomes that produce conflict between water-use sectors, states, or communities and ultimately may lead to crisis. This information will support the delivery of appropriate data, in appropriate formats, at the right time for decision-making and emergency response as well as how water-resource institutions can be more resilient in the face of the many water-resources challenges the nation currently faces.

This collection was originally approved by OMB on 08/22/2022 as a one-year pilot study with an expiration of 8/31/23. We are seeking full approval for this collection request through a request for revision without substantive change.

Title of Collection: Water Resources Management—Institutional Resiliency, Hazards Planning, and Data Delivery.

OMB Control Number: 1028–0131.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, local, Tribal, Federal water resource managers and water resource stakeholders.

Total Estimated Number of Annual Respondents: 265.

Total Estimated Number of Annual Responses: 265.

Estimated Completion Time per Response: Varies from 10 to 60 minutes, depending on activity.

Total Estimated Number of Annual Burden Hours: 154.

Respondent's Obligation: Voluntary.

Frequency of Collection: Twice per year.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Joseph Nielsen,

Director, Integrated Information Dissemination Division, Water Mission Area, USGS.

[FR Doc. 2023–10744 Filed 5–18–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23EN05ESB0500; OMB Control Number 1028–0096]

Regional Climate Adaptation Science Centers

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0096 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Doug Beard, Chief of the USGS National and Regional Climate Adaptation Science Center, by email at *dbeard@usgs.gov* or by telephone at 571–265–4623.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the information collection request (ICR) at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 25, 2023 (88 FR 4843). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The U.S. Geological Survey (USGS) manages nine Regional Climate Adaptation Science Centers (CASCs). Each CASC is established through a cooperative agreement with a host institution. The host institution agreements are periodically re-competed, requiring collection of information from potential host institutions. In addition, this information collection addresses quarterly and annual reporting required of host institutions.

Title of Collection: Department of the Interior Regional Climate Adaptation Science Centers.

OMB Control Number: 1028–0096.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Institutions that may propose to serve as CASC host or partner institutions include state, local government, and tribal entities, including academic institutions. Existing host institutions are state academic institutions.

Total Estimated Number of Annual Respondents: The USGS expects to request proposals for a maximum of three CASCs in any year, and to receive an average of five proposals per CASC-request, for a total of fifteen proposals in any single year. The USGS expects to enter into hosting agreements with a minimum of nine CASC host institutions.

Total Estimated Number of Annual Responses: 124 responses.

Estimated Completion Time per Response: Each proposal for CASC hosting is expected to take 200 hours to complete. The time required to complete quarterly and annual reports for any specific host cooperative agreement or research project agreement is expected to total 2.5–5 hours per report.

Total Estimated Number of Annual Burden Hours: 3,295 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Information will be collected one time every five years (approximately) for each CASC, to enable re-competition of CASC hosting agreements. In addition, host institutions are required to fill four quarterly financial statements and one annual progress report.

Total Estimated Annual Nonhour Burden Cost: There are no ''non-hour cost'' burdens associated with this collection of information.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Olivia E. LeDee,

Deputy Regional Administrator, Midwest Climate Adaptation Science Center, U.S. Geological Survey.

[FR Doc. 2023–10771 Filed 5–18–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MO #4500171195]

Notice of Availability of the Record of Decision and Approved Resource Management Plan Amendment for the SunZia Southwest Transmission Project, New Mexico and Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision approving an amendment to the right-of-way for the SunZia Southwest Transmission Project and the Approved Resource Management Plan Amendment for the Socorro Approved Resource Management Plan located in the Socorro Field Office planning area.

DATES: The Principal Deputy Assistant Secretary for Land and Minerals Management signed the Record of Decision/Approved Resource Management Plan Amendment on May 16, 2023, which constitutes the final decision of the Department of the Interior.

ADDRESSES: The Record of Decision/Approved Resource Management Plan Amendment is available online at *https://eplanning.blm.gov/eplanning-ui/project/2011785/510.* Printed copies of the Record of Decision/Approved Resource Management Plan Amendment are available for public inspection at the BLM New Mexico State Office at 301 Dinosaur Trail, Santa Fe, NM 87508; the BLM Arizona State Office at One North Central Ave., Ste. 800, Phoenix, AZ 85004; the BLM Las Cruces District Office at 1800 Marquess Street, Las Cruces, NM 88005; the BLM Socorro Field Office at 901 South Highway 85, Socorro, NM 87801; the BLM Safford Field Office at 711 14th Ave., Safford, AZ 85546; the BLM Tucson Field Office at 3201 E Universal Way, Tucson, AZ 85756; the Cibola National Forest Supervisor's Office at 2113 Osuna Rd. NE, Albuquerque, NM 87113; and the Sevilleta National Wildlife Refuge at 40 Refuge Road San, Acacia, NM 87831; or can be provided upon request by contacting BLM Project Manager Virginia Alguire at *valguire@blm.gov* or 575–838–1290.

A copy of the Protest Resolution Report is available at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.*

FOR FURTHER INFORMATION CONTACT: The BLM Project Manager Virginia Alguire via telephone: 575–838–1290; address: 901South Highway 85, Socorro, New Mexico, 87801; or email: *valguire@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 Ms. Alguire. 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 Principal Deputy Assistant Secretary for Land and Minerals Management issued a Record of Decision approving an amendment to SunZia Transmission, LLC's right-of-way and an amendment to the existing Socorro Resource Management Plan to allow for the designation of a 400-foot-wide right-of-way through the BLM right-of-way avoidance area. Based on the environmental analysis and input from stakeholders, cooperating agencies, and Tribes, the BLM has identified the Agency Preferred Alternative described in the Final Environmental Impact Statement as the Selected Alternative in the Record of Decision. The Selected Alternative will allow the BLM to issue a right-of-way grant amendment to SunZia Transmission, LLC to use public land administered by the BLM for the Project for the term of the original right-of-way grant. The Record of Decision also approves an amendment to the Socorro Resource Management Plan. The Selected Alternative does not impact right-of-way exclusion areas, the Ladron Mountain Devil's Backbone Complex Area of Critical Environmental Concern, or any visual resource management classes, and thus no plan amendments were required to address these management prescriptions. The Record of Decision provides additional details on the Socorro Resource Management Plan Amendment.

The BLM's Selected Alternative is as follows:

- *Component 1:* Localized route modifications 1–5, and the 2015 Selected Route (the no action alternative in the Final Environmental Impact Statement) for local route modification 6 in the Pinal Central area;
- *Component 2:* All access roads and temporary workspaces outside the granted right-of-way;
- *Component 3:* Alternative Route 2 (Subroute 2A–1) and Alternative Route 3 (Subroute 3A–1), which include crossing the Sevilleta National Wildlife Refuge as well as paralleling the SunZia Transmission Line with the Western Spirit 345-kilovolt Transmission Line at the Rio Grande crossing. For Subroute 3A–1, the agency Selected Alternative includes Local Alternative 3B–2 to avoid two private residences near the Project; and
- *Component 4:* The 2015 Selected Alternative co-locates the ground disturbance associated with the high-voltage direct-current converter station (the SunZia West Substation) with the existing development and ground disturbance associated with the Salt River Project Pinal Central Substation.

The BLM incorporated consideration of the Resource Management Plan amendment into the National Environmental Policy Act process through regular consultation with cooperating agencies, including regular project meetings and invitations to participate in issue identification, analysis planning, and administrative document reviews.

The BLM provided the Proposed Resource Management Plan Amendment for public protest on February 17, 2023, for a 30-day protest period and received three valid protests. The BLM Assistant Director for Resources and Planning resolved all protests. Responses to protest issues were compiled and documented in a Protest Resolution Report (see **ADDRESSES**).

The BLM provided the Proposed Resource Management Plan Amendment to the Governor of New Mexico for a 60-day Governor's consistency review. The Governor's Consistency review period ended April 19, 2023. The New Mexico Governor's Office provided consistency review comments on April 13, 2023. The comments indicated the SunZia Final Environmental Impact Statement and the amendments it would make to the existing approved route for the SunZia Project provides consistency between BLM resource management plans and applicable state laws, policies, and programs. The State of New Mexico stands in support of the BLM's February 17, 2023, Final Environmental Impact Statement and Proposed Resource Management Plan Amendments for the SunZia Southwest Transmission Project.

The BLM's Assistant Director for Resources and Planning concluded that the BLM New Mexico State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website (*https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports*); no changes to the Proposed Resource Management Plan Amendment were necessary.

The SunZia Southwest Transmission Line Project is a ''covered project'' under 42 U.S.C. 4370m. This notice serves the purpose identified in 42 U.S.C. 4370m–6(a)(1)(A).

(Authority: 40 CFR 1506.6; 43 CFR 1610.5–1; 42 U.S.C. 4370m–6(a)(1)(A))

Melanie G. Barnes,

State Director.

[FR Doc. 2023–10784 Filed 5–18–23; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO 4500170680]

Public Land Order No. 7924; Extension of Public Land Order No. 7566; Rhyolite Historic Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order extends the duration of the withdrawal created by Public Land Order (PLO) No. 7566 for an additional 20-year term. PLO No. 7566 withdrew 277.05 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not the mineral leasing laws, subject to valid existing rights, to protect the Rhyolite Historic Site located in Nye County, Nevada.

DATES: This Public Land Order takes effect on May 20, 2023.

FOR FURTHER INFORMATION CONTACT: Frederick Marcell, BLM Nevada State Office, at 202–389–2978, email: *fmarcell@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 Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension in order to continue the protection of the Rhyolite Historic Site. This withdrawal is maintained by the BLM State Office under serial number N–73931.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), it is ordered as follows:

1. PLO No. 7566 (68 FR 27580 (2003)), which withdrew 277.05 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not the mineral leasing laws, subject to valid existing rights, to protect the Rhyolite Historic Site, is hereby extended for an additional 20-year period.

2. This withdrawal extended by this Order will expire on May 19, 2043, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

(Authority: 43 U.S.C. 1714(f))

Robert T. Anderson,

Solicitor.

[FR Doc. 2023–10836 Filed 5–18–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP00000 L13100000.PP0000 234L1109AF]

Notice of Public Meeting, Southern New Mexico Resource Advisory Council, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Southern New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC is scheduled to host an in-person meeting, with a virtual participation option, on Wednesday, June 14, 2023, from 8 a.m. to 12 p.m. Mountain Time at the Inn of the Mountain Gods Resort. This meeting will be followed by an afternoon field tour from 1 to 4 p.m. of the Fort Stanton-Snowy River Cave National Conservation Area Headquarters. The meeting and field tour are open to the public.

ADDRESSES: Attendees for the morning business meeting should meet at the Inn of the Mountain Gods Resort, 287 Carrizo Canyon Road, Mescalaro, NM 88340 at 8 a.m. on Wednesday, June 14, 2023. Attendees for the afternoon field tour should meet at the Fort Stanton-Snowy River Cave National Conservation Area Headquarters, 111 BlackJack Pershing, Ft. Stanton, NM 88323 at 1 p.m. A virtual participation option is available on the Zoom Webinar platform. To register, go to: *https://blm.zoomgov.com/webinar/register/WN_Fl4cFzZlSD-rGSK1uTHEFA.*

Written comments pertaining to the meeting may be filed in advance of the meeting using the BLM address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include ''RAC Comment'' in your submission.

FOR FURTHER INFORMATION CONTACT: William Wight, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005; (575) 525–4300. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The chartered 12-member Southern New Mexico RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in its area of jurisdiction.

Planned meeting agenda items include: a U.S. Forest Service synopsis of proposed recreation fee increases; BLM Las Cruces District future recreation fee increase proposal; and BLM Pecos District recreation fee increase proposal (no vote being taken). At 11:00 a.m., there will be a 15-minute public comment period to be followed by a formal vote on the Federal Land Recreation Enhancement Act fee proposals for the U.S. Forest Service presented at the last meeting.

The agenda is subject to change and will be posted 7 days in advance of the meeting on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/northern-rac.*

All Southern New Mexico RAC field tours and meetings are open to the public.

All attendees will be responsible for their own transportation and meals. Members of the public wishing to attend should notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least two weeks in advance so that the Bureau can ensure compliance with Federal and State of New Mexico large group guidance.

Public Comment Procedures

The BLM welcomes comments from all interested parties. There will be a 15-minute public comment period during the June 14 meeting starting at 11 a.m. for any interested members of the public who wish to publicly address the Southern New Mexico RAC. Depending on the number of persons wishing to speak, the time for individual comments may be limited. For those providing written comments, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Detailed meeting minutes for the Southern New Mexico RAC will be maintained in the Las Cruces District Office listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The meeting minutes will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Minutes will also be posted on the RAC's web page at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/southern-rac.*

Authority: 5 U.S.C. Ch. 10.

James Stovall,

BLM Pecos District Manager.

[FR Doc. 2023–10762 Filed 5–18–23; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35853; 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 May 6, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 5, 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 May 6, 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.

CALIFORNIA

Mendocino County

Bear Harbor Landing Historical and Archaeological District (Northern California Doghole Ports Maritime Cultural Landscape MPS), Address Restricted, Whitethorn vicinity, MP100009041

MAINE

Penobscot County

Alpha Tau Omega House, 81 College Ave., Orono, SG100009047

MISSISSIPPI

Lee County

Benson Farm House, 486 Cty. Rd. 520, Shannon vicinity, SG100009039

Simpson County

Mendenhall Hotel and Revolving Tables Restaurant, The, 100 Wm. Gerald Morgan Memorial Dr., Mendenhall, SG100009037

OHIO

Hamilton County

Riverview House Apartments (Apartment Buildings in Ohio Urban Centers, 1870–1970 MPS), 2538 Hackberry St., Cincinnati, MP100009044

Lucas County

Uptown Toledo Historic District, Roughly bounded by 10th St., Michigan St., Spielbusch Ave., Canton St., Southard Ave., alley to the northeast of Adams St., Adams St., Woodruff Ave., 21st St., 18th

St., Brookwood Ave., and Washington St., Toledo, SG100009042

Montgomery County

College Hill Historic District, Roughly bound by Philadelphia Dr., Wesleyan Rd., alley south of Salem Ave., and Cornell Dr., Dayton, SG100009040

SOUTH DAKOTA

Edmunds County

Krueger, William C. and Anna, Barn, ¼ mile south of jct. of 371st Ave. and 125th St., Wetonka vicinity, SG100009043

WISCONSIN

Grant County

Davies, Edward and Mary, House, 315 North 2nd St., Platteville, SG100009038

Additional documentation has been received for the following resources:

MAINE

Waldo County

Belfast Historic District (Additional Documentation), Roughly bounded by High, Grove and Elm, Congress, Main and Market and Imrose, Belfast, AD86002733

MARYLAND

Frederick County

Brunswick Historic District (Additional Documentation), Roughly bounded by Potomac River, Central, Park and 10th Aves., West C and West B Sts., Brunswick, AD79001128

OREGON

Jackson County

Acorn Woman Peak Lookout (Additional Documentation), (U.S. Forest Service Historic Structures on the Rogue River National Forest MPS), Approx. 8 mi. south of FS Rd. 20, 25 mi. south of Jacksonville, Jacksonville vicinity, AD00000512

Authority: Section 60.13 of 36 CFR part 60.

Dated: May 10, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–10713 Filed 5–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0030]

Notice of Availability of a Draft Environmental Impact Statement for Atlantic Shores Offshore Wind Project 1, LLC and Atlantic Shores Offshore Wind Project 2, LLC's Proposed Wind Energy Facilities Offshore New Jersey

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: BOEM announces the availability of the draft environmental impact statement (DEIS) for the construction and operations plan (COP) submitted by Atlantic Shores Offshore Wind Project 1, LLC and Atlantic Shores Offshore Wind Project 2, LLC for their proposed Atlantic Shores South Wind Project (Project) offshore New Jersey. The DEIS analyzes the potential environmental impacts of the Project as described in the COP (the proposed action) and the alternatives to the proposed action. This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for public hearings on the DEIS. After BOEM holds the public hearings and addresses public comments submitted during the review period, BOEM will publish a final environmental impact statement (EIS). The EIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

DATES: Comments must be received no later than July 3, 2023. BOEM's public hearings will be held on the following dates at the times (eastern time) indicated.

• Holiday Inn Manahawkin/Long Beach Island, 151 Route 72 West, Manahawkin, NJ 08050; Wednesday, June 21, 2023; 5:00 p.m.

• Atlantic City Convention Center, 1 Convention Blvd., Atlantic City, NJ 08401; Thursday, June 22, 2023; 5:00 p.m.

• Virtual, Monday, June 26, 2023; 1:00 p.m.

• Virtual, Wednesday, June 28, 2023; 5:00 p.m.

Registration for in person meetings is not required. Registration for the virtual public hearing is required and may be completed at *https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-south* or by calling (702) 338–4766. Meeting information will be sent to registrants via their email address provided during registration.

ADDRESSES: The DEIS and detailed information about the Project, including the COP, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-south.* Comments can be submitted in any of the following ways:

• Orally or in written form during any of the public hearings identified in this NOA.

• In written form by mail or any other delivery service, enclosed in an envelope labeled ''Atlantic Shores South DEIS'' and addressed to Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

• Through the *regulations.gov* web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2023–0030. Click on the ''Comment'' button below the document link. Enter your information and comment, then click ''Submit Comment.''

For more information about submitting comments, please see ''*Information on Submitting Comments*'' under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1730 or *jessica.stromberg@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Atlantic Shores Offshore Wind Project 1, LLC and Atlantic Shores Offshore Wind Project 2, LLC (collectively Atlantic Shores) seek approval to construct, own, operate, and maintain the Project, which would consist of two wind energy facilities (Project 1 and Project 2) and their associated export cables on the Outer Continental Shelf (OCS) offshore New Jersey. The Project would be developed within the range of design parameters outlined in the COP, subject to applicable mitigation measures.

The Project would be located about 8.7 statute miles (14 kilometers (km)) offshore New Jersey in the area defined in BOEM's renewable energy lease OCS–A 0499 (Lease Area). The Lease Area covers approximately 102,124 acres (413.3-km^2). Project 1 is located in the western 54,175 acres (219.2 km^2) of the Lease Area, and Project 2 is located in the eastern 31,847 acres (128.9 km^2) of the Lease Area, with a 16,102 acre (65.2-km^2) overlap area that could be used by either Project 1 or Project 2. The Project would comprise up to 200 total wind turbine generators (WTGs) (between 105 and 136 WTGs for Project 1 and between 64 and 95 WTGs for Project 2), up to 10 offshore substations (up to 5 in each project), 1 permanent meteorological (met) tower, up to 4 temporary meteorological and oceanographic (metocean) buoys (1 met tower and up to 3 metocean buoys in Project 1 and 1 metocean buoy in Project 2), inter-array and inter-link cables, up to 2 onshore substations, 1 operations and maintenance facility, and up to 8 transmission cables making landfall at up to 2 New Jersey locations: the Atlantic County landfall site in

Atlantic City, New Jersey, or the Monmouth County landfall site in Sea Girt, New Jersey, or both. Project 1 proposes to produce 1,510 MW. The MW for Project 2 has not been determined as Atlantic Shores is still seeking an offtake power agreement for Project 2.

Alternatives: BOEM considered 21 alternatives when preparing the DEIS and carried forward 6 alternatives for further analysis in the DEIS. These 6 alternatives include 5 action alternatives and the no action alternative. BOEM did not analyze in detail 15 of the 21 alternatives because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in chapter 2 of the DEIS. The screening criteria included consistency with law and regulations, technical and economic feasibility, environmental impact, and geographic considerations.

Availability of the DEIS: The DEIS, COP, and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-south.* BOEM has distributed digital copies of the DEIS to all parties listed in appendix M of the DEIS, which also includes the location of all libraries receiving a copy. If you require a digital copy on a flash drive or paper copy, BOEM will provide one upon request, if supplies are available. You may request a flash drive or paper copy of the DEIS by contacting Kimberly Sullivan at (702) 338–4766 or *Kimberly.Sullivan@boem.gov.*

Cooperating Agencies: The following nine Federal agencies and State governmental entities participated as cooperating agencies in the preparation of the DEIS: Bureau of Safety and Environmental Enforcement, U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Fish and Wildlife Service, New Jersey Department of Environmental Protection, New Jersey Board of Public Utilities, and New York State Department of State. The National Park Service and the Advisory Council on Historic Preservation were participating agencies.

Information on Submitting Comments: BOEM does not encourage the submittal of anonymous comments. Please include your name and address as part of your comment. BOEM makes your comment, including your name and address, available for public review online and during regular business hours. You may request that BOEM withhold your name, address, or any other personally identifiable information (PII) included in your comment from the public record; however, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure such as unwarranted privacy invasion, embarrassment, or injury. Even if BOEM withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under FOIA or a relevant court order, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies or if the relevant court order is challenged. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Consistent with section 304 of the NHPA (54 U.S.C. 307103(a)) and after consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of NHPA as confidential.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen J. Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2023–10691 Filed 5–18–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1276]

Certain Light-Based Physiological Measurement Devices and Components Thereof; Notice of a Commission Determination To Review in Part a Final Initial Determination; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ''), finding a violation of section 337. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2021, based on a complaint filed on behalf of Masimo Corporation and Cercacor Laboratories, Inc., both of Irvine, CA (collectively, ''Complainants''). 86 FR 46275 (Aug. 18, 2021). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-based physiological measurement devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,912,501 (''the '501 patent''), U.S. Patent No. 10,912,502 (''the '502 patent''), U.S. Patent No. 10,945,648 (''the '648 patent''), U.S. Patent No. 10,687,745 (''the '745 patent''), and U.S. Patent No. 7,761,127 (''the '127 patent''). *Id.* The amended complaint further alleged that an industry in the United States exists and/or is in the process of being established as required by section 337. *Id.* The notice of investigation named Apple Inc. of Cupertino, CA (''Apple'') as a respondent. *Id.* at 46276. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

Complainants previously withdrew certain asserted claims pursuant to Order No. 25 (Mar. 23, 2022), *unreviewed by* Comm'n Notice (Apr. 12, 2022), and Order No. 33 (May 20, 2022), *unreviewed by* Comm'n Notice (June 10, 2022). Only claim 12 of the '501 patent, claims 22 and 28 of the '502 patent, claims 12, 24, and 30 of the '648 patent, claims 9 and 27 of the '745 patent, and claim 9 of the '127 patent remain in the investigation. Claim 18 of the '745 patent is still at issue for purposes of the domestic industry.

On January 10, 2023, the ALJ issued the Final ID, which found that Apple violated section 337 as to claims 24 and 30 of the '648 patent, but not as to claim 12 of the '501 patent, claims 22 and 28 of the '502 patent, claim 12 of the '648 patent, claims 9 and 27 of the '745 patent, and claim 9 of the '127 patent. *See* Final ID at 335–36. On January 24, 2023, the ALJ issued a Recommended Determination on remedy and bonding (''RD'') should a violation be found in the above-captioned investigation. The RD recommended that, if the Commission finds a violation, it should issue a limited exclusion order directed to certain wearable electronic devices with light-based pulse oximetry functionality and components thereof that are imported, sold for importation, and/or sold after importation by Apple; and a cease and desist order directed to Apple. RD at 2, 5. The RD found the record did not support Apple's request for an exemption for service and repair. *Id.* at 2–3. The RD additionally recommended that the Commission set a zero percent (0%) bond (*i.e.,* no bond) during the sixty-day period of Presidential review. *Id.* at 6.

On January 23, 2023, Complainants and Apple each filed a petition for review. On January 31, 2023, Complainants and Apple each filed responses to the respective petitions. On February 23, 2023, the parties filed their public interest statements pursuant to 19 CFR 210.50(a)(4). The Commission received numerous comments on the public interest from non-parties.

Having reviewed the record of the investigation, including the Final ID, the parties' submissions to the ALJ, and the petitions and responses thereto, the Commission has determined to review the Final ID in part. Specifically, the Commission has determined to review (1) the domestic industry with regard to the'501 patent, the '502 patent, the '648 patent, and the '745 patent; (2) obviousness with regard to the'501 patent, the '502 patent, the '648 patent, and the '745 patent; (3) written description with regard to claim 28 of the '502 patent and claim 12 of the '648 patent; (4) claim construction and infringement with regard to the '745 patent; and (5) subject matter jurisdiction. The Commission has determined not to review the remaining findings of the Final ID, including the finding of no violation as to the '127 patent. The Commission notes that on pages 282–83 of the Final ID, in the section entitled ''Element[9]: 'a thermistor,''' the ALJ refers to claim 1 as the independent claim from which claim 9 depends. The Commission understands that reference to be a typographical error and notes that the reference should be to claim 7.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) What evidence and argument was presented to the ALJ that shows that Complainants were developing, as of the filing of the Complaint, the Masimo Watch and that the Masimo Watch would practice the Poeze and '745 patent claims?

(2) Should the Commission consider evidence post-dating the Complaint, such as the final design of the Masimo Watch, to establish that Complainants were developing a physical article that would practice the Poeze patents and the '745 patent?

(3) If the Commission considers the Masimo Watch to be a domestic industry product in the process of being established for the Poeze patents and the '745 patent, what investments and activities should the Commission consider in its analysis?

(4) What should be considered as a domestic industry product for purposes of an industry in the process of being established—the Rev Sensor products, the Masimo Watch or both? What activities and investments should be considered toward satisfying the domestic industry requirement with respect to that DI product(s)? Was it appropriate to consider investments related to the Circle and Wing Sensors (assuming they are not shown to practice the Poeze patents or the '745 patent prior to the filing of the Complaint) leading to the development of the Rev Sensor products, in finding that a domestic industry exists or is in the process of being established for the Poeze and '745 patents? *See* ID at 301–24. If the Masimo Watch is a DI product for an industry in the process of being established, would it be appropriate to consider activities and investments in products (that themselves do not practice the Poeze patents prior to the filing of the Complaint) that contributed to the development of the Masimo Watch? What investments were made for the Circle sensor, Wing sensor, and Masimo Watch prior to the Complaint being filed and what investments were made after? Should the Commission consider investments made after the Complaint was filed?

(5) Should recruiting labor expenditures be considered to contribute towards the satisfaction of the economic prong?

(6) Should executive labor expenditures generally, and executive legal labor expenditures specifically, be considered to contribute towards the satisfaction of the economic prong? How closely does their work have to be connected to the domestic industry product to be included? With respect to the executive labor included in the Final ID's analysis of a domestic industry (*see* ID at 311–313), what evidence shows the extent to which the executives' work was connected to the domestic industry product?

(7) Is there a statutory basis for considering only certain types of labor expenses with respect to articles protected by the asserted patent for purposes of satisfaction of the domestic industry requirement under section 337(a)(3)(B)?

(8) Is there a legislative history or caselaw basis for considering only certain types of labor expenses with respect to articles protected by the asserted patent for purposes of satisfaction of the domestic industry requirement under section 337(a)(3)(B)?

(9) Does Figure 7B in the Poeze Patents show two emitters, each labeled 104, where each emitter has LEDs that can emit light at or about 1610 nm, about 1640 nm, and about 1665 nm? Was Complainants' argument regarding 37 CFR 1.84(p)(4) raised in front of the ALJ, and if not, can the Commission still consider the argument? Is 37 CFR 1.84(p)(4) binding authority on the Commission and does it require the

Commission to presume that each emitter set 104 is identical? If so, is that disclosure in Figure 7B sufficient to convey with reasonable clarity to those skilled in the art that, as of the filing date, the inventor was in possession of two sets of LEDs each with ''an LED configured to emit light at a first wavelength and an LED configured to emit light at a second wavelength?''

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

In addition, the Commission requests specific briefing to address the following questions relevant to the public interest considerations in this investigation, and responses are encouraged to include evidence in support of their statements:

(1) Please identify any ongoing or formally planned studies that use the blood oxygen features of the Apple Watches. Should the Commission allow an exemption or delay the effective date of any remedial relief so as to permit importation of the infringing Apple Watches for purposes of conducting such studies? Please explain the rationale and the scope of any such exemption or delay.

(2) How should the Commission define a reasonable substitute for the infringing Apple Watches?

(3) Please identify whether any reasonable substitutes for the infringing Apple Watches are available to consumers and whether they are capable of meeting any public health and welfare concerns raised by any remedial relief in this investigation. Is or would there be sufficient supply of any such reasonable substitutes for the infringing Apple Watches? Is the Masimo W1 watch a reasonable substitute and to what extent would supply of these products be available to fill the demand?

(4) Please explain how easily the infringing features of the Apple Watches could be removed and whether Apple is working on any redesigns with respect to the infringing features and how long implementation of any redesigns would take?

(5) Is there any production of like or directly competitive products in the United States and how would such production be impacted by any remedial relief?

(6) Should the Commission include an exemption for repair and/or replacement of broken products impacted pursuant to any potential remedy, and if so, should the exemption only apply under warranty? If a repair and/or replacement exemption is included, should the cutoff date for repair and replacement be the date of the Order or the date the Order becomes final within the meaning of 19 U.S.C. 1337(j)(4)? *See Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same,* Inv. No. 337–TA–1265, Comm'n Op. at 88–92 (Mar. 23, 2023) (Public Version); *Certain Robotic Floor Cleaning Devices and Components Thereof,* Inv. No. 337–TA–1252, Comm'n Op. at 76–82 (Apr. 13, 2023) (Public Version). Should the exemption apply to products imported prior to the cutoff date or only to products sold to an end user as of the cutoff date? Should the exemption cover only parts for repair, or should it permit replacement of entire units? Please cite and discuss the evidence of record relevant to whether the Commission should include a repair and/or replacement exemption.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the RD by the ALJ on remedy and bonding.

In its initial submission, Complainants are also requested to identify the remedy sought and are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to identify and explain, from the record, articles that it contends are ''components thereof'' of the subject products, and thus potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 86 FR 46275–76. Failure to provide this information may result in waiver of any remedy directed to ''components thereof'' the subject products, in the event any violation may be found. Complainants are further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on June 5, 2023. Reply submissions must be filed no later than the close of business on June 12, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 100 pages. Reply submissions are limited to 50 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1276) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on May 15, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–10701 Filed 5–18–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Fifth Review)]

Pure Magnesium From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on March 1, 2022 (87 FR 11472) and determined on June 6, 2022 that it would conduct a full review (87 FR 35997, June 14, 2022). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 27, 2022 (87 FR 65822, November 1, 2022). The Commission conducted its hearing on March 14, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on May 15, 2023. The views of the Commission are contained in USITC Publication 5420 (May 2023), entitled *Pure Magnesium from China: Investigation No. 731–TA–696 (Fifth Review).*

By order of the Commission.

Issued: May 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–10673 Filed 5–18–23; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Randolph J. Stayin did not participate.

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–024]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 25, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings: none.*
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–571–572 and 731–TA–147–1348 (Review)(Biodiesel from Argentina and Indonesia). The Commission currently is scheduled to complete and file its determinations and views of the Commission on June 2, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 17, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–10874 Filed 5–17–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0094]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Survey of Jails (ASJ)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

The proposed information collection was previously published in the **Federal Register**, volume 88 page 10937, on February 22, 2023, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received four comments. Two of the comments expressed support for the continuation of the Annual Survey of Jails. The other two comments suggested new items to collect in the survey, including diagnosed disability and education level at admission; education and job training received during incarceration; job preparedness upon release; information on people who identify as transgender; jail population counts by combined race/ethnicity and sex categories; and admissions and releases from jail by race/ethnicity.

DATES: Comments are encouraged and will be accepted for 30 days until June 20, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Zhen Zeng, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Zhen.Zeng@usdoj.gov;* telephone: 202–598–9955).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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/or
—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.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1121–0094. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Annual Survey of Jails (ASJ).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: CJ–5, The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: State, Local and Tribal Governments.

Abstract: The ASJ is the only national collection that tracks annual changes in the local jail population in the United States and provides national estimates on the number of persons confined in jails, the number of persons jails supervised in programs outside jail, characteristics of the jail population, counts of admissions and releases, and number of staff employed. Policymakers, correctional administrators, and government officials use the ASJ data to develop new policies and procedures, plan budgets, and maintain critical oversight. The ASJ is fielded every year except in the years when BJS conducts the Census of Jails (OMB Control No. 1121–0100). BJS requests clearance for the 2023 and 2025 ASJ under OMB Control No. 1121–0094. In 2024, BJS plans to conduct the Census of Jails and will not field the ASJ in the same year. In 2023, BJS will introduce a verification module to the web instrument to update (1) the agency's contact information; (2) regional and private jail flags; (3) the name and address of the facilities under the agency's jurisdiction; and (4) eligibility of each facility to be included in the ASJ.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 940.

7. *Frequency:* Once a year.

8. *Time per Response:* 88 minutes.

9. *Total Estimated Annual Time Burden:* 1,378 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: May 15, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10697 Filed 5–18–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

On May 15, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Jersey in the lawsuit entitled *United States of America, New Jersey Department of Environmental Protection, Commissioner of the New Jersey Department of Environmental Protection, and Administrator of the New Jersey Spill Compensation Fund* v. *Bank of America, N.A.,* Civil Action No. 3:23–cv–02598.

The United States seeks performance of a remedial action and reimbursement of response costs under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') in connection with the White Swan Cleaners/Sun Cleaners Area Ground Water Contamination Superfund Site (''Site''), located in Wall Township, Manasquan Borough, and Manasquan Borough, Monmouth County, New Jersey. The New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill

Compensation Fund (collectively, ''NJDEP'') are co-plaintiffs.

Under the proposed consent decree, the Settling Defendant (*i.e.,* Bank of America, N.A.) agrees to perform the remedial action relating to vapor intrusion and groundwater that is identified in the United States Environmental Protection Agency's (''EPA'') Record of Decision relating to the Site, dated September 30, 2013, as modified in the Explanation of Significant Differences that EPA issued on September 25, 2017. The proposed consent decree also requires the Settling Defendant to pay the United States $10.8 million for past and future response costs and up to $1.5 million for future oversight costs. Further, the proposed consent decree requires Settling Defendant to pay a total of $6.5 million to NJDEP to resolve its liability for past and future costs and for natural resource damages.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States of America, New Jersey Department of Environmental Protection, Commissioner of the New Jersey Department of Environmental Protection, and Administrator of the New Jersey Spill Compensation Fund* v. *Bank of America, N.A.,* Civil Action No. 3:23–cv–02598, D.J. Ref. No. 90–11–3–11140. All comments must be submitted no later than sixty (60) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $664.75 (25 cents per page reproduction cost), for the consent decree with appendix, or $10.25 for the consent decree without the appendix, payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–10667 Filed 5–18–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Complaint Form, Federal Coordination and Compliance Section

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 18, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Stoneman, Acting Chief, Federal Coordination and Compliance Section, 950 Pennsylvania Avenue NW–4CON, Washington, DC 20002, phone: 202–307–2222.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Abstract: Authorized by Title VI of the Civil Rights Act, 1964, 42 U.S.C. 2000d and the Antidiscrimination provision of the Omnibus Crime Control and Safe Streets Act, 28 U.S.C. 42.101 *et seq.,* this collection of information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary, and to provide information needed to initiate investigation of the complaint.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Complaint Form, Federal Coordination and Compliance Section.

3. *The agency form name/number, if any, and the applicable component of the Department sponsoring the collection:* Form: FCS Complaint and Consent Form.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. Obligation is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: An estimated 4,000 respondents will respond once a year to this collection. The time per response is 30 minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated public burden is 2,000 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The annual cost burden associated with this collection is $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
FCS Complaint and Consent Form	4,000	1	4,000	.5	2,000
Unduplicated Totals	*4,000*		*4,000*		*2,000*

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 15, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10693 Filed 5–18–23; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Health Questionnaire

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Workforce Innovation and Opportunity Act (WIOA) authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program, 29 U.S.C. 3194–3195. As part of the admissions process, information on the health status of an applicant is collected on the ETA 653. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2023 (88 FR 8477).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Job Corps Health Questionnaire.

OMB Control Number: 1205–0033.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 66,630.

Total Estimated Number of Responses: 66,630.

Total Estimated Annual Time Burden: 8,884 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: May 15, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–10690 Filed 5–18–23; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1997

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet, (202) 693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The National Longitudinal Survey of Youth 1997 (NLSY97) includes respondents who were born in the years 1980 through 1984 and lived in the United States when the survey began in 1997. The primary objective of the survey is to study the transition from full-time schooling to the establishment of careers and families. The longitudinal focus of the survey requires information to be collected about the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. One of the goals of the Department of Labor is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The Bureau of Labor Statistics contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. For additional substantive information about this ICR see the related notice published in the **Federal Register** on March 3, 2023 (88 FR 13471).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The current approval is scheduled to expire on August 31, 2024.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–BLS.

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Control Number: 1220–0157.

Affected Public: Individuals and households.

Total Estimated Number of Respondents: 6,570.

Total Estimated Number of Responses: 6,670.

Total Estimated Annual Time Burden: 8,113 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–10688 Filed 5–18–23; 8:45 am]

BILLING CODE 4510–26–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME AND DATE: 3:30 p.m., Tuesday, May 23, 2023.

PLACE: 1255 Union Street NE, Fifth Floor, Washington, DC 20002. Or via ZOOM.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Committee Meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b (c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. Call to Order

Open Session—Action Items

II. Sunshine Act Approval of Executive (Closed) Session

Executive (Closed) Session

III. Government Accountability Office (GAO) Report, Recommendations and Responses

IV. Other Matters

V. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2023–10806 Filed 5–17–23; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–026; NRC–2008–0252]

Southern Nuclear Operating Company Inc.; Vogtle Electric Generating Plant, Unit 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined License (COL) NPF–92, issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (collectively, SNC), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Unit 4, located in Burke County, Georgia.

DATES: Submit comments by June 20, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. A request for a hearing or petition for leave to intervene must be filed by July 18, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William ''Billy'' Gleaves, Vogtle Project Office, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The application for amendment, dated April 17, 2023, is available in ADAMS under Accession No. ML23107A278.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–92, issued to SNC for construction and operation of the VEGP Unit 4, located in Burke County, Georgia.

The proposed changes would revise the COL to modify the current Unit 4 COL Condition 2.D(9), Technical Specifications (TS), to limit the scope of COL Appendix A TS that become effective upon a Commission finding in accordance with section 52.103 paragraph (g) of tile of the *Code of Federal Regulations* (10 CFR). The proposed revision to the COL Condition would provide temporary exceptions prior to initial criticality of the reactor core for certain TS while operating in Modes 4, 5, and 6. The COL Appendix A TS are proposed to be permanently effective at Unit 4 initial criticality of the reactor core. The proposed change also includes revision to COL Appendix A TS Limiting Condition for Operation 3.0.7 to coordinate with the TS compliance provisions proposed in the COL Condition.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not adversely affect the operation of any structures, systems, or components (SSCs) associated with an accident initiator or initiating sequence of events. The proposed changes do not affect the design of Engineered Safety Systems (ESF), or the associated Protection and Safety Monitoring System (PMS) and Diverse Actuation System (DAS) instrumentation and controls. The proposed amendment does not affect accident initiators or precursors nor adversely alter the design assumptions, conditions, and configuration of the facility. The proposed amendment does not alter any plant equipment or operating practices with respect to such initiators or precursors in a manner that the probability of an accident is increased. The proposed amendment will not alter assumptions relative to the mitigation of an accident or transient event, as these assumptions are based upon irradiated fuel for the associated accident or transient. The proposed amendment does not increase the likelihood of the malfunction of a system, subsystem, or component (SSC) or impact analyzed accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not introduce any new or unanalyzed modes of operation. The proposed changes do not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis, as these assumptions are based upon irradiated fuel for the associated accident or transient.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is related to maintaining safety analysis and design basis acceptance criteria, including the ability of the fission product barriers to perform their design functions during and following an accident. No safety analysis or design basis acceptance criterion is challenged or exceeded by the proposed changes. Since the changes apply only prior to the reactor core being initially critical there are no fissions products, and therefore, there is no potential for a reduction in a margin of safety associated with fission product barriers.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/cfr*. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html*.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated April 17, 2023.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Director: Cayetano G. Santos.

Dated: May 16, 2023.

For the Nuclear Regulatory Commission.

Cayetano G. Santos,

Acting Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–10724 Filed 5–18–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265; NRC–2023–0081]

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a January 27, 2023, request from Constellation Energy Generation, LLC (Constellation), regarding the submittal of a subsequent license renewal application for Quad Cities Nuclear Power Station, Units 1 and 2. Pursuant to this exemption, if the licensee submits a subsequent license renewal application at least 3 years prior to the expiration of the existing operating licenses, and if the NRC staff finds it acceptable for docketing, the existing operating licenses will be in timely renewal under NRC regulations until the NRC has made a final determination on whether to approve the subsequent license renewal application.

DATES: The exemption was issued on May 15, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0081 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0081. 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.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Kuntz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3733; email: *Robert.Kuntz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: May 16, 2023.

For the Nuclear Regulatory Commission.

Robert F. Kuntz,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

Nuclear Regulatory Commission

Docket Nos. 50–254 and 50–265

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2

Exemption

I. Background

Constellation Energy Generation, LLC (Constellation, the licensee), is the holder of Renewed Facility Operating Licenses Nos. DPR–29 and DPR–30 which authorize operation of the Quad Cities Nuclear Power Station (Quad Cities), Units 1 and 2. These units are boiling-water reactors located in Rock Island County, Illinois. The operating licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect. The current operating licenses for Quad Cities, Units 1 and 2, each expire on December 14, 2032.

II. Request/Action

By letter dated January 27, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23027A061), Constellation requested an exemption from 10 CFR 2.109(b), which provides that if a nuclear power plant licensee files a sufficient license renewal application ''at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.'' Specifically, Constellation requested timely renewal protection under 10 CFR 2.109(b) if it submits a subsequent license renewal application (SLRA) for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of the existing licenses.

In its January 27, 2023, letter, the licensee stated that three special circumstances apply to its exemption request. The three special circumstances that Constellation included in its request are:

(1) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(2) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; and

(3) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

III. Discussion

Under 10 CFR 54.17(a), the NRC requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b). As provided in 10 CFR 54.15, exemptions from the requirements of Part 54 may be granted by the Commission in accordance with 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2).

A. The Exemption is Authorized by Law

This exemption would allow Constellation to receive timely renewal protection under 10 CFR 2.109(b) if it submits a sufficient SLRA for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of its existing licenses. This means that if the licensee submits an updated SLRA by December 14, 2029, and the staff finds it acceptable for docketing, the existing licenses for Quad Cities Units 1 and 2 will not be deemed to have expired until the NRC has made a final determination on whether to approve the SLRA. The staff has determined that granting this exemption is authorized by law.

Section 103c. of the Atomic Energy Act of 1954, as amended, permits the Commission to issue operating licenses, including renewed licenses. Section 2.109 implements Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), which states:

> When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109(b) is not required by the Atomic Energy Act of 1954, as amended, or the Administrative Procedure Act. It is the result of a discretionary agency rulemaking under Sections 161 and 181 of the Atomic Energy Act of 1954, as amended (56 FR 64943; December 13, 1991) that was designed to provide the NRC with a reasonable amount of time to review a license renewal application and decide whether to approve it. Prior to 1992, the rules provided that licensees would have received timely renewal protection when they submitted their license renewal applications 30 days before the expiration of the current license. (56 FR 64943; December 13, 1991). In 1990, the NRC proposed modifying 10 CFR 2.109 to provide that applications must be submitted 3 years before expiration of the current license to be afforded timely renewal protection. (55 FR 29043; July 17, 1990). There is nothing in the preamble supporting the proposed rule or final rule revising 10 CFR 2.109(b) that suggests that applying the timely renewal doctrine to license renewal applications submitted 30 days before the expiration of the license was not authorized by law. Instead, it appears the Commission proposed to revise 10 CFR 2.109(b) from 30 days to 3 years before the expiration of the license so that the final determination on a license renewal application would typically be made before the current operating license expired. In the proposed rule, the Commission explained that it did not believe 30 days would provide ''a reasonable time to review an application for a renewed operating license'' and estimated that the technical review of a license renewal application would take approximately 2 years. (55 FR 29043; July 17, 1990). In the final rule, the Commission stated that the technical review of the application would take approximately 2 years due to the review of many complex technical issues and that ''any necessary hearing could likely add an additional year or more'' (56 FR 64943; December 13, 1991). Ultimately, the Commission concluded in the final rule that timely renewal protection would be provided for license renewal applications filed 5 years before the operating license expired to promote consistency with the requirement that licensees submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their current operating licenses. Thus, in promulgating 10 CFR 2.109(b), the Commission considered that the time period needed to reach a final determination may be less than 5 years in some cases, but the rule also provides timely renewal protection for timely-filed applications to account for situations where the resolution of complex technical issues may take more time.

The exemption constitutes a change to the schedule by which the licensee must submit its SLRA and is administrative in nature; it does not involve any change to the current operating license. Under 10 CFR 54.17(a), an application for a renewed license must be filed in accordance with subpart A of 10 CFR part 2, which includes 10 CFR 2.109(b). However, the NRC may grant exemptions from the requirements of 10 CFR part 54 pursuant to 10 CFR 54.15. For the reasons stated above, the NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the Administrative Procedure Act, or the NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for Constellation to submit a sufficient SLRA and receive timely renewal protection is a scheduling change. The action does not change the manner in which the plant operates and maintains public health and safety because the exemption from 10 CFR 2.109(b) does not result in a change to the facility or the current operating license. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the SLRA, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern. Based on the above, the NRC finds that the exemption does not cause undue risk to public health and safety.

C. The Exemption is Consistent With the Common Defense and Security

The requested exemption is a scheduling change that does not alter the design, function, or operation of any structures or plant equipment that is necessary to maintain safe and secure status of any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

D. Special Circumstances

The Commission will not consider granting a specific exemption from the requirements in 10 CFR part 50 unless special circumstances are present. For the following reasons, the NRC finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) are present for Quad Cities, Units 1 and 2. That is, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule, and compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

Special Circumstance of 10 CFR 50.12(a)(2)(ii)

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the ''timely renewal'' provision of Section 9(b) of the APA, 5 U.S.C. 558(c). The underlying purpose of this ''timely renewal'' provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR part 54, with associated changes to 10 CFR parts 2, 50, and 140, in the **Federal Register** (56 FR 64943; December 13, 1991). The statement of considerations discussed the basis for establishing the latest date for filing license renewal applications for the purposes of the timely renewal doctrine (56 FR 64962; December 13, 1991). As discussed in Section III.A of this issuance, the NRC originally estimated that approximately 3 years would be a reasonable amount of time to review a license renewal application and to complete any hearing that might be held on the application. The NRC changed its original deadline from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and related financial assurance information and when they must submit their license renewal application to receive timely renewal protection.

Accordingly, application of the 5-year period in 10 CFR 2.109(b) is not necessary to achieve the underlying purpose of the timely renewal provision in the regulation if Constellation files a sufficient SLRA at least 3 years prior to expiration of the Quad Cities, Units 1 and 2, licenses. The NRC's current schedule for review of SLRAs is to complete its review and make a decision on issuing the renewed license within 22 months of acceptance if there is no hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's review and of the hearing process, and issuance of a decision on the license renewal application within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a sufficient application being submitted and on the review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstance of Quad Cities, Units 1 and 2.

Special Circumstance of 10 CFR 50.12(a)(2)(iii)

In addition, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is present in the circumstances of Quad Cities, Units 1 and 2. Compliance with 10 CFR 2.109(b) would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. In its application, Constellation stated that the decision to continue power operation at Quad Cities, Units 1 and 2, depends on uncertain economic and legislative environments. The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is also present.

Special Circumstance of 10 CFR 50.12(a)(2)(vi)

Because the NRC staff finds that special circumstances exist under 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii), the NRC staff did not consider whether special circumstances also exist under 10 CFR 50.12(a)(2)(vi), as presented by the licensee in its exemption request.

E. Environmental Considerations

The NRC has determined that the issuance of the requested exemption meets the provisions of categorical exclusion 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies as a categorical exclusion if (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, which includes scheduling requirements under 10 CFR 51.22(c)(25)(vi)(G). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the SLRA at least 3 years before the expiration of the existing license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption constitutes a change to the schedule by which Constellation must submit its SLRA and still place the licenses in timely renewal, which is administrative in nature, and does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption constitutes a change to the schedule by which Constellation must submit its SLRA and still place the licenses in timely renewal, which is administrative in nature, and does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(G), the exemption must involve scheduling requirements. The exemption involves scheduling requirements because it would allow Constellation to submit a SLRA for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of the existing licenses, rather than the 5 years specified in 10 CFR 2.109(b), and still place the licenses in timely renewal under 10 CFR 2.109(b). Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the licensee a one-time exemption such that if the licensee submits a subsequent license renewal application for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of the existing operating licenses, and if the NRC Staff finds it acceptable for docketing, the existing operating licenses will be in timely renewal under NRC regulations until the NRC has made a final determination on whether to approve the subsequent license renewal application.

This exemption is effective upon issuance.

Dated: May 15, 2023.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–10723 Filed 5–18–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–1151, 11004036, 11004358, 11004552, 11004736, 11004752, 11004918, 11005030, 11005042, 11005057, 11005536, 11005908, 11006001, 11006014, 11006040, 11006060, 11006085, 11006217, 11005472, 11006011, 11006216, 11004990, 11005224, 11005639, 11005968, 11006233, 11006332, 11006333, 11006334, 11006403, 11006430, 11006446, 11006453; NRC–2023–0038]

Westinghouse Electric Company, LLC; Order Approving Indirect Transfer of Control of License

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued an Order approving the indirect transfer of several licenses for Westinghouse Electric Company, LLC (Westinghouse). Westinghouse is the holder of special nuclear materials (SNM) license number SNM–1107, which authorizes the possession and use of SNM at the Columbia Fuel Fabrication Facility in Hopkins, South Carolina. Westinghouse is also the holder of several export licenses as noted in the Order. The Order approves the indirect transfer of control of these licenses resulting from the acquisition of Westinghouse's intermediate parent company, Brookfield WEC Holdings Inc., by Watt New Aggregator L.P., in which Brookfield Corporation will hold a controlling 51 percent interest and Cameco Corporation will hold the remaining 49 percent interest. The Order became effective upon issuance.

DATES: The Order was issued on May 15, 2023, and is effective until May 15, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0038 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2023–0038. 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.
- *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 Order and Safety Evaluation Report is available in ADAMS under Package Accession No. ML23096A266.
- *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.

FOR FURTHER INFORMATION CONTACT: Jenny Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2328; email: *Jennifer.Tobin@nrc.gov*.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: May 16, 2023.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

Attachment—Order Approving the Indirect Transfer of Control of Licenses

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of Westinghouse Electric Company, LLC: EA–23–052; Docket Nos. 70–1151, 11004036, 11004358, 11004552, 11004736, 11004752, 11004918, 11005030, 11005042, 11005057, 11005536, 11005908, 11006001, 11006014, 11006040, 11006060, 11006085, 11006217, 11005472, 11006011, 11006216, 11004990, 11005224, 11005639, 11005968, 11006233, 11006332, 11006333, 11006334, 11006403, 11006430, 11006446, 11006453; License Nos. SNM–1107, XCOM1014, XCOM1047, XCOM1072, XCOM1093, XCOM1094, XCOM1102, XCOM1111, XCOM1113, XCOM1116, XCOM1170, XCOM1188, XCOM1219, XCOM1246, XCOM1249, XCOM1252, XCOM1255, XCOM1262, XCOM1298, XSNM3006, XSNM3163, XSNM3264, XSNM3461, XSNM3702, XSNM3769, XSNM3802, XSNM3803, XSNM3804, XSNM3820, XSNM3825, XSNM3829, XSNM3830, XR169, XR176, XR178

Order Approving the Indirect Transfer of Control of Licenses

I

Westinghouse Electric Company, LLC (Westinghouse), is the holder of materials license number SNM–1107, which authorizes the possession and use of special nuclear material (SNM) at the Columbia Fuel Fabrication Facility (CFFF) in Hopkins, South Carolina. Westinghouse is also the holder of export license numbers: XCOM–1014, XCOM–1047, XCOM–1072, XCOM–1093, XCOM–1094, XCOM–1102, XCOM–1111, XCOM–1113, XCOM–1116, XCOM–1170, XCOM–1188, XCOM–1219, XCOM–1246, XCOM1249, XCOM–1252, XCOM–1255, XCOM–1262, XCOM–1298, XR–169, XR–176, XR–178, XSNM–3006, XSNM–3163, XSNM–3264, XSNM–3461, XSNM–3702, XSNM–3769, XSNM–3802, XSNM–3803, XSNM–3804, XSNM–3820, XSNM–3825, XSNM–3829, and XSNM–3830.

II

By letter dated December 20, 2022 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML22354A291), and supplemented by letters dated February 17, 2023 (ADAMS Accession Numbers ML23053A070 and ML23053A074), and February 27, 2023 (ADAMS Accession Number ML23058A448), (collectively, the Application), Westinghouse requested the U.S. Nuclear Regulatory Commission's (NRC) consent to the indirect transfer of control of the licenses listed above. The Application describes the indirect transfer of control of Westinghouse from Brookfield WEC Holdings Inc. (WEC Holdings), one of Westinghouse's intermediate parent companies, to Watt New Aggregator L.P. (Watt), an exempted limited partnership formed under the laws of the Cayman Islands, which is ultimately controlled by Brookfield Corporation (Brookfield), a Canadian company.

Westinghouse is currently a wholly owned subsidiary of WEC Holdings. Upon closing of the transaction, Watt will acquire 100% of Westinghouse. Brookfield will indirectly hold a 51 percent interest in Watt and Watt GP

Ltd., a Bermuda company limited by shares, which controls Watt as its general partner. The remaining 49 percent interest in Watt and Watt GP Ltd. will be held by Cameco Corporation.

There will be no direct transfer of control involved with the transaction because Westinghouse will continue to be the licensee. There will also be no change in the management or technical personnel responsible for licensed activities. The current safety, security, and licensing organizations within Westinghouse will remain unchanged. Additionally, there are no planned changes in the operational organization, location, facilities, equipment, or procedures associated with the NRC licenses, and there will be no changes in Westinghouse operating procedures, emergency procedures, or decommissioning financial assurance. Because the licensee remains the same, there will be no physical transfer of any records concerning the safe and effective decommissioning of the facility, public dose, and waste disposal, and such records will remain with Westinghouse. No physical or operational changes affecting the Westinghouse sites and licensed activities were proposed in the Application.

Westinghouse requested the NRC's consent to the indirect transfer of control, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act or AEA), and title 10 of the *Code of Federal Regulations* (10 CFR) section 70.36 and 110.50. A notice of receipt of the Application and opportunity to request a hearing and provide written comments was published in the **Federal Register** on February 16, 2023 (88 FR 10146). The NRC did not receive any comments or requests for a hearing in response to the notice.

Section 184 of the AEA provides that no NRC license shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the AEA, and gives its consent in writing. Pursuant to 10 CFR 70.36, no 10 CFR part 70 license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, unless the NRC, after securing full information, finds that the transfer is in accordance with the provisions of the Act, and gives its consent in writing. After review of the information in the Application, and relying on the representations and agreements contained in the Application, the NRC staff has determined that Watt is qualified to hold the ownership interests previously held by WEC Holdings, and that the transfer of ownership and operating interests to Watt, described in the Application, is otherwise consistent with applicable provisions of law and regulations. The NRC staff further finds that the requested transfer of control will not be inimical to the common defense and security or to the health and safety of the public. The findings set forth above are supported by the NRC's Safety Evaluation Report issued with this Order. These findings are subject to the conditions set forth below.

III

Accordingly, pursuant to Sections 161.b., 161.i., 183, and 184 of the Act; 42 U.S.C. 2201(b), 2201(i), 2233, and 2234; and 10 CFR 70.36, IT IS HEREBY ORDERED that the Application regarding the indirect transfer of control over licenses listed above from WEC Holdings to Watt, is approved, subject to the following conditions:

1. With respect to the licenses listed above, Westinghouse shall continue to abide by all commitments and representations it previously made. These include, but are not limited to, maintaining decommissioning records and financial assurance, conducting decontamination activities, and eventually decommissioning the site.

2. The commitments/representations made in the Application regarding reporting relationships and authority over safety and security matters as well compliance with NRC requirements, shall be adhered to and may not be modified without the prior written consent from the Director, Office of Nuclear Material Safety and Safeguards, or that person's designee.

It is further ordered that Westinghouse, at least one (1) business day before all actions necessary to accomplish the indirect transfer of control are completed, shall so inform the Director, Office of Nuclear Material Safety and Safeguards, in writing. Should the proposed indirect transfer not be completed within one year from the date of issuance of this Order, the Order shall become null and void; provided, however, upon timely written application and for good cause shown, such completion date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the Application cited in section II above, and the Safety Evaluation Report supporting this action (ADAMS Accession Number ML23096A282), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible, electronically, through the ADAMS Public Electronic Reading Room, on the internet, at the NRC website, *http://www.nrc.gov/reading-rm/adams.html* . Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff, by telephone, at 1–800–397–4209, 301–415–4737, or via email, to *pdr@nrc.gov.*

Dated and issued this 15th day of May, 2023.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–10722 Filed 5–18–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 22, 29, June 5, 12, 19, 26, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of May 22, 2023

There are no meetings scheduled for the week of May 22, 2023.

Week of May 29, 2023—Tentative

There are no meetings scheduled for the week of May 29, 2023.

Week of June 5, 2023—Tentative

Friday, June 9, 2023

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting), (Contact: Larry Burkhart: 301–287–3775)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of June 12, 2023—Tentative

Tuesday, June 13, 2023

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting) (Contact: Angie Randall: 301–415–6806)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of June 19, 2023—Tentative

Tuesday, June 20, 2023

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Nicole Fields: 630–829–9570)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of June 26, 2023—Tentative

There are no meetings scheduled for the week of June 26, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 17, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–10868 Filed 5–17–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–157 and CP2023–161; MC2023–158 and CP2023–162]

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 23, 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).:* MC2023–157 and CP2023–161; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 20 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* May 23, 2023.

2. *Docket No(s).:* MC2023–158 and CP2023–162; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 19 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* May 23, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–10764 Filed 5–18–23; 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

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International 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 Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* May 19, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 15, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 20 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–157 and CP2023–161.

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–10696 Filed 5–18–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–616, OMB Control No. 3235–0671]

Extension: Rule 613 of Regulation NMS

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 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.

Rule 613 of Regulation NMS (17 CFR part 242) required national securities exchanges and national securities associations (''Participants'') to jointly submit to the Commission a national market system (''NMS'') plan to govern the creation, implementation, and maintenance of a consolidated audit trail (''CAT'') and Central Repository for the collection of information for NMS securities. On February 27, 2015, the Participants submitted the CAT NMS Plan to the Commission.[1] On April 27, 2016, the Commission published a notice soliciting comments from the public (''CAT NMS Plan Notice'').[2] On November 15, 2016, the Commission approved the CAT NMS Plan (''CAT NMS Plan Order''), including the information collections proposed in the CAT NMS Plan Notice, and certain additional information collections.[3]

Since July 2020, the date of the last PRA renewal, the Commission believes one additional information collection was completed: a one-time independent audit of the fees, costs, and expenses incurred by the Participants on behalf of CAT NMS, LLC prior to the Effective Date[4] of the Plan;[5] In addition. certain information collection requirements have completed at least the implementation stage, although certain ongoing costs remain, including: (1) development of a Central Repository tasked with the receipt, consolidation, and retention of reported order and execution information submitted by Participants and their members;[6] (2) the requirement that each Participant, and any member of such Participant, record and electronically report to the Central Repository details for each order and Reportable Event documenting the life of an order through the process of original receipt or origination, routing, modification, cancellation, and execution (in whole or in part) for each NMS security;[7] (3) the requirement that the CAT NMS Plan require the Central Repository to collect and retain on a current and continuous basis NBBO information for each NMS security, transaction reports reported pursuant to an effective transaction reporting plan, and Last Sale Reports reported pursuant to the Options Price Reporting Authority Plan;[8] (4) the requirement that the CAT NMS Plan must require that every national securities exchange and national securities association develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the consolidated audit trail;[9] (5) an annual requirement that that the CAT LLC financials be (i) in compliance with GAAP, (ii) be audited by an independent public accounting firm, and (iii) be made publicly available;[10] and (6) a requirement that each Participant conduct background checks for its employees and contractors that will use the CAT System.[11]

This Notice addresses both the ongoing information collection requirements noted above and the remaining information collection requirements noticed in the CAT NMS Plan Notice and certain additional information collections of the CAT NMS Plan Order, which are: (1) a one-time report from the Participants discussing the feasibility and advisability of allowing Industry Members to bulk download the Raw Data that it has submitted to the Central Repository;[12] (2) a one-time assessment of the nature and extent of errors in the Customer

[1] *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The Participants filed the CAT NMS Plan on September 30, 2014. *See* Letter from the Participants, to Brent J. Fields, Secretary, Commission, dated September 30, 2014. The CAT NMS Plan filed on February 27, 2015, was an amendment to and replacement of the Initial CAT NMS Plan (the ''Amended and Restated CAT NMS Plan''). On December 24, 2015, the Participants submitted an Amendment to the Amended and Restated CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015 (the ''Amendment''). On February 9, 2016, the Participants filed with the Commission an identical, but unmarked, version of the Amended and Restated CAT NMS Plan, dated February 27, 2015, as modified by the Amendment, as well as a copy of the request for proposal issued by the Participants to solicit Bids from parties interested in serving as the Plan Processor for the consolidated audit trail. Unless the context otherwise requires, the ''CAT NMS Plan'' shall refer to the Amended and Restated CAT NMS Plan, as modified by the Amendment.

[2] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613 (May 17, 2016). The burdens associated with the CAT NMS Plan Notice were submitted under OMB number 3235–0671 which relates to the NMS Plan required to be filed under Rule 613.

[3] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016), *available at https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf* (''CAT NMS Plan Order'').

[4] The ''Effective Date'' is the date the Commission approved the CAT NMS Plan, which is November 15, 2016. *See id.*

[5] *See* CAT NMS Plan Order, *supra* note 3, at 84940.

[6] *See* 17 CFR 242.613.

[7] *See* 17 CFR 242.613(c)(1), (c)(5), (c)(6), (c)(7).

[8] *See* 17 CFR 242.613(e)(7).

[9] *See* 17 CFR 242.613(f).

[10] *Id.*

[11] *Id.* The Commission believes that these background checks are necessary to ensure that only authorized and qualified persons are using the CAT System.

[12] *Id.* at 84941.

information submitted to the Central Repository and whether the correction of certain data fields over others should be prioritized from the Participants; [13] (3) a one-time report on the impact of tiered fees on market liquidity, including an analysis of the impact of the tiered-fee structure on Industry Members provision of liquidity from the Participants; [14] and (4) an assessment of the projected impact of any Material Systems Change on the Maximum Error Rate, prior to the implementation of such Material Systems Change from the Participants; [15]

The Commission believes that the CAT NMS Plan, once fully implemented, will improve the quality of the data available to regulators in four areas that affect the ultimate effectiveness of core regulatory efforts—completeness, accuracy, accessibility and timeliness.[16] The improvements in these data qualities would substantially improve regulators' ability to perform analysis and reconstruction of market events, and market analysis and research to inform policy decisions, as well as perform regulatory activities, in particular market surveillance, examinations, investigations, and other enforcement functions.

The Commission estimates that 1375 respondents [17] will require an aggregate total of approximately 4,931,332 hours per year to comply with the collection of information. The Commission further estimates that the aggregate cost to comply with the collection of information will be approximately $328,627,524 per year.

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 18, 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 16, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10781 Filed 5–18–23; 8:45 am]

BILLING CODE 8011–01–P

[13] *Id.*

[14] *Id.* at 84941–84942.

[15] *Id.* at 84942. The Commission believes that four assessments would be filed annually.

[16] *See* CAT NMS Plan Order, *supra* note 3, at 45727 (discussing four "qualities" of trade and order data that impact the effectiveness of core Participant and Commission regulatory efforts: accuracy, completeness, accessibility, and timeliness).

[17] The Commission notes that 25 Participants (the 24 national securities exchanges and one national securities association) and 1,350 broker-dealers subject to information collections requirements pursuant to Rule 613 and the CAT NMS Plan.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34917; File No. 812–15401]

PGIM Investments LLC and PGIM Private Credit Fund

May 16, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c), 18(i) and section 61(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies to issue multiple classes of shares with varying sales loads and asset-based distribution and/or service fees.

APPLICANTS: PGIM Investments LLC and PGIM Private Credit Fund.

FILING DATES: The application was filed on November 1, 2022, and amended on May 5, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2023, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* The Applicants: Claudia DiGiacomo, *claudia.digiacomo@pgim.com;* Debra Rubano, *debra.rubano@prudential.com;* Benjamin C. Wells, *bwells@stblaw.com;* and Ryan Brizek, *ryan.brizek@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' amended and restated application, dated May 5, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10782 Filed 5–18–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97506; File No. SR–Phlx–2023–09]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of Proposed Rule Change To Permit the Listing and Trading of Options on the Nasdaq-100 ESG Index

May 15, 2023.

I. Introduction

On March 28, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing and trading of options on the Nasdaq-100 ESG Index. The proposed rule change was published for comment in the **Federal Register** on April 6, 2023.[3] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to permit the listing and trading of options on the Nasdaq-100 ESG Index (''NDXESG''; and such options, ''NDXESG options''). The NDXESG is a broad-based, modified ESG Risk Rating Score-adjusted market capitalization-weighted index that is designed to measure the performance of the companies in the Nasdaq-100 Index (''NDX'') that meet specific environmental, social, and governance (''ESG'') criteria outlined in the NDXESG's methodology.[4] The NDXESG at all times consists of a selection of securities in the NDX.[5] The Exchange believes there is unmet market demand for exchange-listed security options on the NDXESG,[6] and that the introduction of NDXESG options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors.[7]

The Exchange states that the NDXESG meets the ''broad-based index'' definition set forth in the Exchange's rules at Phlx Options 4A, section 2(a)(13).[8] The Exchange also states that the NDXESG meets, and NDXESG options would meet, the Exchange's initial and maintenance listing criteria for a broad-based index and options thereon, as set forth in Phlx Options 4A, sections 3(d) and 3(e).[9] NDXESG options could have up to twelve near-term expiration months, as well as long-term options series.[10] In addition, the NDXESG options would be a.m.-settled and cash-settled contracts with European-style exercise.[11] Strike price intervals would be at no less than $2.50 intervals.[12] The minimum trading increment for NDXESG options would be $0.05 for options trading below $3.00 and $0.10 for all other options, and NDXESG options would be available for trading during the Exchange's standard trading hours for index options.[13] NDXESG options would also be subject to the same margin and suitability rules that apply to the Exchange's other index options.[14]

The position and exercise limits for NDXESG options would be 25,000 contracts on the same side of the market.[15] Each member or member organization that maintains a position in NDXESG options on the same side of the market in excess of 100,000 contracts for its own account or for the account of a customer would be required to file a report with the Exchange pursuant to proposed Phlx Options 4A, section 6(c).[16] The position and exercise limits for FLEX options on the NDXESG would also be 25,000 contracts on the same side of the market.[17]

The Exchange states that it has, and that it believes the Options Price Reporting Authority (''OPRA'') has, the necessary systems capacity to handle additional quotations and message traffic associated with the proposed listing and trading of NDXESG options.[18] The Exchange also states that index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes.[19] The Exchange states that it has adequate surveillance procedures to monitor trading in NDXESG options, thereby aiding in the maintenance of a fair and orderly market.[20]

The Exchange also proposes to amend its rule text at Phlx Options 8, section 34(e), to directly align the position limits for FLEX index options with the position limits for the corresponding standard index options within Phlx Options 4A, section 6. According to the Exchange, this proposed amendment would not change the current position limits for FLEX index options, but rather would simply cross-reference the index option position limits in Phlx Options 4A, section 6, as opposed to restating each position limit within the rule text. Today, the position limits for standard index options are identical to the FLEX index options on the same index, and with this proposed amendment, those position limits would continue to be identical.[21] Finally, the Exchange proposes a technical correction to Phlx Options 4A, section 6(c), to add an ''or'' within that paragraph.[22]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[23] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and section 6(b)(8) of the Act,[25] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Permitting the trading of options on an index of securities enables investors to participate in the price movements of the index's underlying securities and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission believes that the Exchange's proposal to permit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97232 (March 31, 2023), 88 FR 20582 (''Notice'').

[4] *See* Notice, 88 FR at 20583 and n.5.

[5] *See id.* at 20583.

[6] *See id.* at 20585.

[7] *See id.* at 20584.

[8] *See id.* at 20583.

[9] *See id.*

[10] *See id.*

[11] *See id.*

[12] *See id.*

[13] *See id.* at 20584.

[14] *See id.*

[15] *See id.* The proposed position and exercise limits are in accordance with Phlx Options 4A, section 6(a), and Options 4A, section 10.

[16] *See id.*

[17] *See* proposed Phlx Options 8, section 34(e).

[18] *See* Notice, 88 FR at 20584.

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(8).

the listing and trading of NDXESG options could benefit investors by providing them with additional investment and hedging alternatives. As the Exchange notes, the proposed NDXESG options could become part of market participants' investment and hedging strategies related to positions in both the NDXESG and NDX in light of the relationship between these two indices.[26] Moreover, options on broad-based, ESG-related indexes are not novel. For example, options on the S&P 500 ESG Index are listed and traded on Cboe Exchange, Inc.[27] The proposed NDXESG options could, therefore, promote competition; further, consistent with section 6(b)(8) of the Act, they are not designed to impose an unnecessary burden on competition.

The Commission also believes that the proposal is consistent with the protection of investors and the public interest. The NDXESG is a broad-based index under the Exchange's rules, and the NDXESG and proposed NDXESG options meet the Exchange's criteria for the initial listing of options on a broad-based index, which previously have been approved by the Commission.[28] After initial listing, the Exchange's maintenance listing criteria, which also have been previously approved by the Commission, will apply to NDXESG options.[29] The Commission believes that the application and satisfaction of these listing requirements significantly minimize the potential for manipulation of the NDXESG or for adverse market impact to result from the listing or trading of NDXESG options.

In addition, the proposed terms for NDXESG options—such as listing up to twelve near-term expiration months and LEAPS, the strike interval, a.m.-settlement, cash-settlement, European-style exercise, and the minimum trading increment—are consistent with the terms for other broad-based index options trading on Phlx, including NDX options.[30] In the same vein, the Exchange rules applicable to broad-based index options regarding sales practices, customer accounts, position and exercise limits, margin requirements, and trading halts will apply to the NDXESG options.[31] Likewise, the Exchange's existing surveillance and reporting safeguards for index options will apply to NDXESG options.[32] Further, the Exchange states that it and OPRA have the necessary systems capacity to handle the additional message traffic associated with the listing of new option series that may result from this proposal.[33] The Commission believes that the Exchange's rules governing the trading of index options help to ensure the maintenance of fair and orderly markets, including with respect to the proposed NDXESG options, which is consistent with the protection of investors and the public interest.

Importantly, NDXESG options would be subject to the 25,000 contract position limit that is generally applicable to broad-based index options under Phlx Options 4A, section 6(a), and an equivalent exercise limit under Phlx Options 4A, section 10. Further, under amended Phlx Options 8, section 34(e), and Phlx Options 8, section 34(f), the position and exercise limits for FLEX options on the NDXESG would also be 25,000 contracts on the same side of the market. The Commission believes that the proposed position and exercise limits also should help minimize the potential for manipulation and adverse market impact surrounding the use of the NDXESG options.

Finally, the Commission believes that the proposed amendments to correct a technical grammar error in Phlx Options 4A, section 6(c), and to align the position limits for FLEX index options in Phlx Options 8, section 34(e), with the position limits for the corresponding standard index options in Phlx Options 4A, section 6, would clarify the rule text, reduce the potential for confusion regarding FLEX index option position and exercise limits, and promote internal consistency within the Exchange's rules.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[34] that the proposed rule change (SR–Phlx–2023–09) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10686 Filed 5–18–23; 8:45 am]

BILLING CODE 8011–01–P

[26] *See* Notice, 88 FR at 20585.

[27] *See* Securities Exchange Act Release No. 89749 (September 2, 2020), 85 FR 55723 (September 9, 2020).

[28] *See* Notice, 88 FR at 20585; Phlx Options 4A, section 3(d); *see also* Securities Exchange Act Release No. 54158 (July 17, 2006), 71 FR 41853 (July 24, 2006) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Listing Standards for Broad-Based Index Options) (''Phlx Listing Standards Approval Order'').

[29] *See* Notice, 88 FR at 20585; Phlx Options 4A, section 3(e); *see also* Phlx Listing Standards Approval Order.

[30] *See* Notice, 88 FR at 20585.

[31] *See id.*

[32] *See id.*

[33] *See id.* at 20584.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before July 18, 2023.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Marybeth Kerrigan, Financial Analyst, Office of Financial Assistance Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Marybeth Kerrigan, Financial Analyst, *mary.kerrigan@sba.gov.* Curtis B. Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: The Small Business Administration requires information to be disclosed to the buyer when a secondary market loan is transferred from one investor to another. This information includes a constant annual prepayment rate based upon the seller's analysis of prepayment histories of SBA guaranteed loans with similar maturities. Additionally, information is required on the terms, conditions and yield of the security being transferred.

OMB Control Number: 3245–0212.

Title: ''Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guarantee Interest Certificate''.

Description of Respondent: Secondary market.

Form Number: 1088.

Annual Responses: 856.

Annual Burden: 733.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–10741 Filed 5–18–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12077]

Proposal To Extend Cultural Property Agreement Between the United States and China

SUMMARY: Proposal to extend *The Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material From the Paleolithic Period Through the Tang Dynasty and Monumental Sculpture and Wall Art at least 250 Years Old.*

FOR FURTHER INFORMATION CONTACT: Anne Compton, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 377–9783; *culprop@state.gov;* include ''China'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of *The Memorandum of Understanding Between the Government of the United States of America and the Government of the People's Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through the Tang Dynasty and Monumental Sculpture and Wall Art at least 250 Years Old* is hereby proposed. A copy of the *Memorandum of Understanding,* the Designated List of categories of material restricted from import into the United States and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–10769 Filed 5–18–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12078]

Cultural Property Advisory Committee; Notice of Meeting

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (''the Committee'').

Dates and Times: The Committee will meet virtually June 5, 2023, from 8:00 a.m. to 5:00 p.m. (EDT) and June 6, 2023 from 8:00 a.m. to 12:00 p.m. (EDT).

Participation: The public may participate in, or observe, the virtual open session on June 5, 2023, from 2:00 p.m. to 3:00 p.m. (EDT). More information below.

FOR FURTHER INFORMATION CONTACT: Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204–4765; (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION: The Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (''the Act''). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the proposed extension of an agreement with the Government of the People's Republic of China and review the proposed extension and amendment of an agreement with the Republic of Bulgaria.

The Open Session: The general public can observe the virtual open session on June 5, 2023. Registered participants may provide oral comments for a maximum of five (5) minutes each. The Department provides specific instructions on how to observe or provide oral comments at the open session at *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-April-26-27-2023.*

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, to *culprop@state.gov* by May 26, 2023. Written comments are not required to make an oral comment during the open session.

Written Comments: The Committee will review written comments if received by 11:59 p.m. (EDT) on May 26, 2023. Written comments may be submitted in two ways, depending on whether they contain confidential information:

- *General Comments:* For general comments, use *http://www.regulations.gov,* enter the docket [DOS–2023–0016], and follow the prompts.
- *Confidential Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''China'' and/or ''Bulgaria'' in the subject line.
- *Disclaimer:* The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-April-26-27-2023.* Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via regulations.gov are not private and are posted at *https://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–10775 Filed 5–18–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12079]

Notice of Meeting of Advisory Committee on International Law

A meeting of the Department of State's Advisory Committee on International Law will take place on Friday June 9, 2023, from 9:00 a.m. to 3:15 p.m. at the George Washington

University Law School, Frederick Lawrence Student Conference Center, 2023 G St. NW, 2nd Floor, Washington, DC. Acting Legal Adviser Richard C. Visek will chair the meeting, which will be open to the public up to the capacity of the meeting room. The meeting will include discussions on international law topics, including how non-intervention applies in cyberspace and developments with Advisory Opinions at the International Court of Justice.

Members of the public who wish to attend should contact the Office of the Legal Adviser by May 26 at *rangchitm@state.gov* or 202–485–6590 and provide their name, professional affiliation (if any), email address, and phone number. Priority for in-person seating will be given to members of the Advisory Committee, and remaining seating will be reserved based upon when persons contact the Office of the Legal Adviser. A more detailed agenda will be available to registered participants in advance of the meeting. Attendees who require reasonable accommodation should make their requests by May 26. Requests received after that date will be considered but might not be possible to accommodate.

Tara M. Rangchi,

Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. 2023–10736 Filed 5–18–23; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 12076]

Proposal To Extend the Cultural Property Agreement Between the United States and Bulgaria

SUMMARY: Proposal to extend and amend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bulgaria Concerning the Imposition of Import Restrictions on Categories of Archaeological Material and Ethnological Material of the Republic of Bulgaria.*

FOR FURTHER INFORMATION CONTACT: Chelsea Freeland, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 714–8403; *culprop@state.gov;* include ''Bulgaria'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension and amendment of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bulgaria Concerning the Imposition of Import Restrictions on Categories of Archaeological Material and Ethnological Material of the Republic of Bulgaria* is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material restricted from import into the United States and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–10768 Filed 5–18–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12082]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy (ACPD) will hold a virtual public meeting on Wednesday, June 14, 2023, from 2:00 p.m. until 3:15 p.m. ET focusing on the ''Use of Artificial Intelligence in Public Diplomacy.'' During the meeting, a distinguished panel of experts will examine the use of AI tools in support of public diplomacy initiatives for a global community of PD practitioners, scholars, and policymakers.

This meeting is open to the public, including the media and members and staff of governmental and non-governmental organizations. To obtain the Zoom conference link and password, please register here: *https://statedept.zoomgov.com/webinar/register/WN_4E4sqpmuS-6A0G-UUo7gxw.* To request reasonable accommodation, please email ACPD Program Assistant Kristy Zamary at *ZamaryKK@state.gov.* Please send any request for reasonable accommodation no later than Monday, May 29, 2023. Requests received after that date will be considered but might not be possible to fulfill.

Since 1948, the ACPD has been charged with appraising activities intended to understand, inform, and influence foreign publics and to increase the understanding of, and support for, these same activities. The ACPD conducts research that provides honest assessments of public diplomacy efforts, and disseminates findings through reports, white papers, and other publications. It also holds public symposiums that generate informed discussions on public diplomacy issues and events. The Commission reports to the President, Secretary of State, and Congress and is supported by the Office of the Under Secretary of State for Public Diplomacy and Public Affairs.

For more information on the U.S. Advisory Commission on Public Diplomacy, please visit *https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy/,* or contact Executive Director Vivian S. Walker at *WalkerVS@state.gov* or Senior Advisor Deneyse Kirkpatrick at *kirkpatrickda2@state.gov.*

Authority: 22 U.S.C. 2651a, 22 U.S.C. 1469, 5 U.S.C. 1001 *et seq.,* and 41 CFR 102–3.150.

Vivian S. Walker,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2023–10714 Filed 5–18–23; 8:45 am]

BILLING CODE 4710–45–P

TENNESSEE VALLEY AUTHORITY

Integrated Resource Plan and Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) is conducting a study of its energy resources. The Integrated Resource Plan (IRP) is a comprehensive study of how TVA will meet the demand for electricity in its service territory. TVA's most recent IRP was adopted by the TVA Board in 2019. As part of this new study, TVA will prepare a programmatic Environmental Impact Statement (EIS) to assess the impacts associated with the implementation of the next IRP. The EIS analyzes significant environmental impacts to the combined TVA power service area and the Tennessee River watershed (TVA region) that could result from the targeted power supply mix studied in the IRP. TVA will use the EIS process to elicit and prioritize the values and concerns of stakeholders; identify issues, trends, events, and tradeoffs affecting TVA's policies; formulate, evaluate, and compare alternative portfolios of energy resource options; provide opportunities for public review and comment; and ensure that TVA's evaluation of alternative energy resource strategies reflects a full range of stakeholder input. Public comment is invited concerning both the scope of the EIS and environmental issues that

should be addressed as a part of this EIS.

DATES: Comments must be postmarked, emailed, or submitted online no later than July 3, 2023. To facilitate the scoping process, TVA will hold public scoping meetings; see *https://www.tva.gov/IRP* for more information on the meetings.

ADDRESSES: Written comments should be sent to Kelly Baxter, NEPA Specialist, 400 West Summit Hill Drive, WT 11B, Knoxville, TN 37902–1499. Comments may also be submitted online at *https://www.tva.gov/IRP* or by email at *IRP@tva.gov.*

FOR FURTHER INFORMATION CONTACT: Kelly Baxter, 865–632–2444, *IRP@tva.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing National Environmental Policy Act (NEPA). TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the TVA region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

TVA Power System

TVA operates the nation's largest public power system, providing electricity to about 10 million people in an 80,000-square mile area comprised of most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It provides wholesale power to 153 independent local power companies and 58 directly served large industries and federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis and directs TVA to sell power at rates as low as are feasible.

Dependable generating capability on the TVA power system is approximately 38,000 megawatts. TVA generates most of the power it distributes with three nuclear plants, five coal-fired plants, nine simple-cycle combustion turbine plants, eight combined-cycle combustion turbine plants, 29 hydroelectric dams, a pumped-storage facility, a diesel-fired facility, and 13 solar photovoltaic facilities. A portion of delivered power is provided through power purchase agreements, including 15 renewable energy agreements. In 2022, 39 percent of TVA's power supply was from nuclear; 22 percent from natural gas; 13 percent from coal; eight percent from hydroelectric; 13 percent from non-renewable purchases; and five percent from renewable power purchase agreements. TVA transmits electricity from these facilities over 16,000 circuit miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding its region and purchases and sells power on an economic basis almost daily.

Resource Planning

TVA develops an Integrated Resource Plan to identify the most effective energy resource strategies that will meet TVA's mission and serve the people of the region. In this IRP, TVA intends to address strategies through 2050. Consistent with Section 113 of the Energy Policy Act of 1992, TVA employs a least-cost system planning process in developing its IRPs. This process takes into account multiple factors, including: the demand for electricity, energy resource diversity, energy conservation and efficiency, renewable energy resources, flexibility, dispatchability, reliability, resiliency, costs, risks, environmental impacts, and the unique attributes of different energy resources.

Proposed Issues To Be Addressed

Based on discussions with both internal and external stakeholders, TVA anticipates that the scope of the IRP EIS will include the cost and reliability of power, carbon reduction efforts, the availability and use of renewable and distributed energy resources, the effectiveness and implementation of demand side management options, the effect of energy efficiency programs, and the relationship of the economy to all of these options. The IRP EIS will address the effects of power production on the environment, including climate change, the effects of climate change on the TVA region, and the waste and byproducts of TVA's power operations.

Because of its nature as a planning document, the IRP will not identify specific locations for new resource options. Site-specific environmental effects of new resource options will be addressed in later site-specific assessments tiered off this programmatic EIS. Therefore, in this programmatic environmental impact statement, TVA anticipates that the environmental effects examined will primarily be those at a regional level with some extending to a national or global level. Preliminary issues identified by TVA that will be reviewed in this analysis include:

- emissions of greenhouse gases,
- fuel consumption,
- air quality,
- water quality and quantity,
- waste generation and disposal,
- land use,
- ecological,
- cultural resources, and
- socioeconomic impacts and environmental justice.

TVA invites suggestions or comments concerning the list of issues which should be addressed, including suggestions for how TVA can effectively reach and receive comments from environmental justice communities during the NEPA process. TVA also invites specific comments on the questions that will begin to be answered by this IRP:

- How do you think the demand for energy will change between now and 2050 in the TVA region?
- Should the diversity of the current power generation mix (*e.g.,* nuclear, coal, natural gas, hydroelectric, renewable resources) change? If so, how?
- How should distributed energy resources be considered in TVA planning?
- How should energy efficiency and demand response be considered in planning for future energy needs and how can TVA directly affect electricity usage by consumers?
- And how will the resource decisions discussed above affect the reliability, dispatchability (ability to turn on or off energy resources), and cost of electricity? Are there other factors of risk to be considered?

Analytical Approach

TVA employs a scenario planning approach when developing an IRP. Scenario planning provides an understanding of how the results of near-term and future decisions would change under different conditions over the planning horizon. The major steps in this approach include identifying the future need for power, developing scenarios (*i.e.,* alternate plausible futures outside of TVA's control with different economic and regulatory conditions) and strategies (*i.e.,* alternate business approaches within TVA's control), determining potential supply-side and demand-side energy resource options, developing portfolios associated with the strategies, and ranking strategies and portfolios. The 2019 IRP, developed with extensive public involvement, evaluated five alternative energy resource strategies that differed in the amount of purchased power, energy efficiency and demand response efforts, renewable energy resources, natural gas, and nuclear generating capacity additions, and coal-fired generation. The alternative strategies were analyzed in the context of six different scenarios that described plausible future economic, financial, regulatory, and legislated conditions, as well as social trends and adoption of technological innovations. TVA then developed a preferred alternative, the Target Power Supply Mix, based on guideline ranges for key energy resources. In developing the Target Power Supply Mix, TVA conducted least-cost planning taking into account customer priorities of power cost and reliability, as well as other comments it received during the public comment periods regarding demand for electricity, energy resource diversity, energy conservation and efficiency, renewable energy resources, flexibility, dispatchability, reliability, environmental impacts, and risks. The Target Power Supply Mix established ranges, in MW, for coal plant retirements and additions of nuclear, hydroelectric, demand response, energy efficiency, solar, wind, and natural gas capacity. TVA anticipates using an analytical approach similar to that of the 2019 IRP/EIS described above. The number of alternative energy resource strategies and scenarios to be evaluated may differ from the 2019 IRP/EIS and will be determined after the completion of scoping.

Scoping Process

Scoping, which is integral to the process for implementing NEPA, provides an early and open process to ensure that (1) issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided.

With the help of the public, TVA will identify the most effective energy resource strategy that will meet TVA's mission and serve the people of the region between now and 2050. To ensure that the full range of issues and a comprehensive portfolio of energy resources are addressed, TVA invites members of the public as well as Federal, state, and local agencies and Indian tribes to comment on the scope of the IRP EIS, including potential alternative energy resource strategies. In addition, TVA invites the public to identify information and analyses relevant to the IRP EIS. As part of the IRP process and in addition to other public engagement opportunities, TVA is assembling representatives from key stakeholders to participate in an IRP Working Group that will discuss tradeoffs associated with different resource options and assist TVA in developing an optimal energy resource strategy.

Comments on the scope of this IRP EIS should be submitted no later than the date given under the **DATES** section of this notice. Written requests by agencies or Indian tribes to participate as a cooperating agency or consulting party must also be received by this date. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of the comments received during this scoping period, TVA will summarize public and agency comments, identify the issues and alternatives to be addressed in the EIS, and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the U.S. Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft IRP and EIS and also hold public meetings for this purpose. TVA expects to release the draft IRP and EIS in early 2024. TVA anticipates issuing the final IRP and EIS in 2024.

Authority: 40 CFR 1501.9.

Susan Jacks,

General Manager, Environmental Resource Compliance.

[FR Doc. 2023–10652 Filed 5–18–23; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Cheatham County Generation Site Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an Environmental Impact Statement (EIS) to address the potential environmental impacts associated with the proposed construction and operation of a simple cycle Combustion Turbine (CT) plant and Battery Energy Storage System (BESS) on a parcel of TVA-owned land in Cheatham County, Tennessee. The Cheatham County Generation Site (CHG) would generate approximately 900 Megawatts (MW) and replace generation capacity for a portion of the Cumberland Fossil Plant (CUF) second unit retirement planned by the end of 2028. The CHG CTs would be composed of multiple natural gas-fired frame CTs and natural gas-fired and oil-fired (*i.e.,* dual-fuel) Aeroderivative CTs. CHG would provide flexible and dispatchable transmission grid support and facilitate the integration of renewable generation onto the TVA bulk transmission system, consistent with the 2019 Integrated Resource Plan (IRP). TVA is inviting public comment concerning the scope of the EIS, alternatives being considered, and environmental issues that should be addressed as a part of this EIS.

DATES: The public scoping period begins with the publication of this notice of intent in the **Federal Register**. To ensure consideration, comments must be postmarked, submitted online, or emailed no later than June 20, 2023. To facilitate the scoping process, TVA will hold an in-person public open house; see *https://www.tva.gov/NEPA* for more information on the meeting.

ADDRESSES: Written comments should be sent to J. Taylor Johnson, NEPA Compliance Specialist, 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402. Comments may also be submitted online at: *https://www.tva.gov/NEPA* or by email at *nepa@tva.gov.*

FOR FURTHER INFORMATION CONTACT: For general information about the project, please contact J. Taylor Johnson, NEPA Compliance Specialist, by mail at 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402, by email at *nepa@tva.gov,* or by phone at 423–751–2732.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

TVA Transmission System

TVA provides electricity for local power companies serving 10 million people in Tennessee and parts of six surrounding states, as well as directly to large industrial customers and Federal installations. TVA is fully self-financed without Federal appropriations and funds virtually all operations through electricity sales and power system bond financing. Dependable electrical capacity on the TVA power system is approximately 38,000 MW. TVA transmits electricity from generating facilities over 16,000 miles of transmission lines.

Generation Asset Planning

In June 2019, TVA published an IRP, which was developed with input from stakeholder groups and the public. The 2019 IRP evaluated six scenarios (plausible futures) and five strategies (potential TVA responses to those plausible futures) and identified a range of potential resource additions and retirements throughout the TVA power service area, which encompasses approximately 80,000 square miles.

The target supply mix adopted by the TVA Board through the 2019 IRP included the potential retirement of 2,200 MW of coal-fired generation by 2038. The IRP acknowledged continued operational challenges for the aging coal fleet and included a recommendation to conduct end-of-life evaluations during the term of the IRP to determine whether retirements greater than 2,200 MW would be appropriate. Following the publication of the IRP, TVA began conducting these evaluations to inform long-term planning. TVA's recent evaluation confirms that the aging coal fleet is among the oldest in the nation and is experiencing deterioration of material condition and performance challenges. Consistent with aging coal fleet evaluation, TVA made a decision to retire the first CUF unit by the end of 2026 and the second unit by the end of 2028. Generation from the proposed project would replace a portion of the capacity of the second CUF unit to be retired by 2028. Generation from the proposed project would also be consistent with the target supply mix in the 2019 IRP that aims the addition of up to 5,200 MW of simple cycle capacity by 2028 to facilitate the integration of solar onto the TVA bulk power system.

Project Purpose and Need

The TVA-owned land for TVA's proposed project is in Ashland City, Cheatham County, Tennessee, which is approximately 22 miles northwest of Nashville. The total property is approximately 285 acres with the proposed project footprint covering a footprint of approximately 75 acres. TVA's EIS would evaluate the proposed action to replace a portion of the 1,450 MW generation capacity of the second CUF unit planned for retirement in 2028 with up to 900 MW of generation capacity from CHG.

The purpose of the proposed action is to help provide generation to support continued load growth in the Tennessee Valley and TVA's decarbonization goals. TVA needs flexible, dispatchable power that can successfully integrate increasing amounts of renewable energy sources while ensuring reliability. One of the purposes of the proposed action is to facilitate the integration of solar onto the electric grid and thereby advance TVA's decarbonation goals.

The need for the Proposed Action is to ensure that TVA can meet required year-round generation and maximum capacity system demands and planning reserve margin targets. By constructing and operating a CT with a BESS interconnected to the transmission system at the same location, TVA would continue providing dispatchable and reliable energy to the people of the Tennessee Valley at the lowest feasible cost with fewer environmental impacts than the current generating capacity that is being replaced. The addition of the proposed 400 MW-hour BESS could also help TVA maintain grid stability and reliability as generating assets with greater minute-by-minute variability are integrated into TVA's transmission system (*e.g.* wind and solar generating assets).

Preliminary Proposed Action and Alternatives

TVA anticipates that the scope of the EIS will evaluate a No Action Alternative and an Action Alternative. The No Action alternative provides a baseline for comparing against the Action Alternative. Under the No Action Alternative, TVA would not develop the TVA-owned property in Cheatham County for energy generation. The Action Alternative would evaluate the development of the CHG property for construction and operation of a CT interconnected with a BESS. The CHG property would also include an approximately 13-acre pollinator habitat along Sycamore Creek. Whether these or other alternatives are reasonable warranting further consideration under NEPA would be determined in the course of preparing the EIS. Related actions, such as the construction of an approximately 12-mile natural gas pipeline lateral and off-site transmission lines, will also be assessed in this EIS. The pipeline facilities to bring gas supply to the CHG property would, to the extent practicable, be located within or adjacent to an existing pipeline right of way.

Anticipated Environmental Impacts

The EIS will include a detailed evaluation of the environmental, social, and economic impacts associated with implementation of the proposed action. Resource areas to be addressed in the EIS include, but are not limited to: air quality; aquatics; botany; climate change; cultural resources; emergency planning; floodplains; geology and groundwater; land use; noise and vibration; soil erosion and surface water; socioeconomics and environmental justice; threatened and endangered species; transportation; visual; waste; wetlands; and wildlife. Measures to avoid, minimize, and mitigate adverse effects will be identified and evaluated in the EIS.

Anticipated Permits and Other Authorizations

TVA anticipates seeking required permits or authorizations, as appropriate. The construction of the natural gas pipeline(s) would be subject to Federal Energy Regulatory Commission (FERC) jurisdiction and additional review will be undertaken by FERC in accordance with its own NEPA procedures. TVA's proposed action to construct a CT and BESS may also require issuance of an air permit under the Clean Air Act, an Individual or Nationwide Permit under section 404 of the Clean Water Act; section 401 Water Quality Certification; conformance with Executive Orders on Environmental Justice (12898), Wetlands (11990), Floodplain Management (11988), Migratory Birds (13186), and Invasive Species (13112); and compliance with section 106 of the National Historic Preservation Act, section 7 of the Endangered Species Act, and other applicable local, Federal, and State regulations.

Public Participation and Scoping Process

Scoping, which is integral to the process for implementing NEPA, provides an early and open process to ensure that issues are identified early and properly studied; issues of little significance do not consume substantial time and effort; the draft EIS is thorough and balanced; and delays caused by an inadequate EIS are avoided. TVA seeks comment and participation from all interested parties for identification of potential alternatives, information, and analyses relevant to the proposed action in this EIS. Information about this project is available at *https://www.tva.gov/NEPA,* which includes a link to an online public comment page. Comments must be received or postmarked no later than June 20, 2023. Federal, State, local agencies, and Native American Tribes are also invited to provide comments. Please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection. TVA plans to have an open house on

May 24, 2023. Visit *https://www.tva.gov/NEPA* to obtain more information about the open house.

EIS Preparation and Schedule

TVA will consider comments received during the scoping period and develop a scoping report which will be published at *https://www.tva.gov/NEPA.* The scoping report will summarize public and agency comments that were received and identify the projected schedule for completing the EIS process. Subsequently, following completion of the environmental analysis, TVA will post a Draft EIS for public review and comment on the project web page. TVA anticipates holding a public open house after releasing the Draft EIS. Open house details will be posted on TVA's website in conjunction with the Draft EIS. TVA expects to release the Draft EIS in 2024, a Final EIS in 2025, and a Record of Decision at least 30-days after the release of the Final EIS.

Authority: 40 CFR 1501.9.

Susan Jacks,

General Manager, Environmental Resource Compliance.

[FR Doc. 2023–10651 Filed 5–18–23; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Pumped Storage Hydro Programmatic Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) is conducting a study to evaluate increasing pumped storage hydropower (PSH) capacity within its power service area. To meet its obligations under the National Environmental Policy Act (NEPA), TVA is preparing a Programmatic Environmental Impact Statement (PEIS) to evaluate potential new PSH facilities at two locations in Jackson County, Alabama and expansion of the existing Raccoon Mountain PSH Plant in Marion County, Tennessee. Based on the findings of the PEIS, TVA may potentially select one or more sites as the need for long-duration energy storage increases. The PEIS will consider potential environmental and economic impacts from the construction and operation at each site.

DATES: To ensure consideration, comments on the scope and environmental issues must be postmarked, emailed, or submitted online no later than July 5, 2023. To facilitate the scoping process, TVA will hold a virtual public scoping meeting; see *https://www.tva.gov/nepa* for more information on the meeting.

ADDRESSES: Written comments should be sent to Elizabeth Smith, NEPA Compliance Specialist, 400 West Summit Hill Dr., WT 11D, Knoxville, TN 37902–1499. Comments may also be submitted online at: *https://www.tva.gov/nepa* or by email at *pumpedstorageNEPA@tva.gov.*

FOR FURTHER INFORMATION CONTACT: For general information about the NEPA process and/or general project information, please email *pumpedstorageNEPA@tva.gov,* or NEPA Specialist, Elizabeth Smith, at (865) 632–3053.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the NEPA. TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

The analyses in a programmatic NEPA review are valuable in setting out the broad view of environmental impacts and benefits for a proposed decision such as a rulemaking, or establishing a policy, program, or plan. That programmatic NEPA review can then be relied upon when agencies make decisions based on the programmatic EIS, as well as decisions based on a subsequent (also known as tiered) NEPA review.

Background

PSH is a type of hydroelectric energy storage that consists of two water reservoirs at different elevations in which water can be pumped to the higher elevation reservoir during periods in which energy storage is needed and then can be released during periods when energy is needed on the electrical grid. PSH is utilized for long term storage to provide for reserves on the grid, use excess energy to store water in the higher reservoir when demand drops below the base load generation, and to support intermittent generation for renewables such as wind and solar.

TVA is planning a substantial decarbonization effort and aspires to be carbon neutral by 2050. As part of these efforts, long-duration storage (8 to 12 hours) will be needed to balance the daily energy cycle. This long-duration storage will enable additional generation from solar, new nuclear, and carbon capture technologies.

Long duration energy storage, like pumped storage, supports nuclear generation and carbon capture technologies by assisting with load balancing and allowing these technologies to run nearly full time, which is important as these technologies are generally not conducive to following the demand curve and work best when running fully loaded. PSH is a reliable and proven technology. The addition of pumped storage hydro facilities could also help TVA maintain grid stability and reliability in the future grid with less dispatchable generation and greater minute-by-minute variability due to fluctuations in output from renewables such as solar and wind.

Project Purpose and Need

TVA is planning a substantial decarbonization effort with aspirations of being carbon neutral by 2050. To meet these goals, long-duration storage (8 to 12 hours) will be needed to balance the daily energy cycle. This long-duration storage will enable additional generation from solar, new nuclear, and carbon capture technologies.

Long duration energy storage, like pumped storage, supports nuclear generation and carbon capture technologies by assisting with load balancing and allowing these technologies to run nearly full time, which is important as these technologies are generally not conducive to following the demand curve and work best when running fully loaded. PSH is a reliable and proven technology. The addition of pumped storage hydro facilities could also help TVA maintain grid stability and reliability in the future grid with less dispatchable generation and greater minute-by-minute variability due to fluctuations in output from renewables such as solar and wind.

The purpose of this PEIS is to evaluate the potential for pumped storage facilities in two areas in Jackson County, Alabama, and an expansion of the existing facility at Raccoon Mountain and to consider potential environmental and economic impacts from the construction and operation of pumped storage facilities at each site. After the PEIS, one or more sites will be further evaluated, and transmission line siting performed. The impacts of that evaluation and transmission options for the preferred site(s) will be considered in a future supplement to this PEIS.

Preliminary Proposed Action and Alternatives

TVA has initially identified four alternatives for evaluation in the PEIS associated with the proposed pumped storage hydro facilities. These include a No Action Alternative and three Action Alternatives. Under the No Action Alternative, TVA will evaluate and consider the impact of not including additional PSH in TVA's energy storage fleet. TVA will evaluate and consider each of the Action Alternatives to determine which site(s) are best suited for pumped storage. The Action Alternatives will include the expansion of the existing PSH facility at Raccoon Mountain, constructing a new facility near Pisgah, Alabama (Rorex Creek), and constructing a new facility near Fabius, Alabama (Widows Creek). Both new facilities would be located within Jackson County, Alabama.

The description and analysis of these alternatives in the PEIS will inform decision makers, other agencies, and the public about the potential for environmental impacts associated with the proposed PSH facilities. TVA solicits comment on whether there are other alternatives that should be assessed in the PEIS. TVA also requests information and analyses that may be relevant to the project.

Anticipated Environmental Impacts

Public scoping is integral to the process for implementing NEPA and ensures that (1) issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, and (3) the analysis of identified issues is thorough and balanced. This PEIS will identify the purpose and need of the Action Alternatives and will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by the proposed project. Evaluation of potential environmental impacts to these resources will include, but not be limited to, water resources, biological resources, cultural resources, natural areas and recreation, navigation, utilities, recreation, geology and groundwater, air quality and climate change, greenhouse gas emissions, land use and prime farmland, noise, public health and safety, socioeconomics and environmental justice, solid and hazardous waste and material, transportation, and visual resources. The PEIS will analyze measures that would avoid, minimize, or mitigate environmental effects.

The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received. TVA is particularly interested in public input on other reasonable alternatives that should be considered in the PEIS. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Anticipated Permits and Other Authorizations

TVA anticipates consulting with the required authorities including, but not limited to: the Endangered Species Act; Bald and Golden Eagle Protection Act; Rare Species Protection and Conservation Act; National Historic Preservation Act; Clean Air Act; and Federal Clean Water Act.

TVA anticipates seeking required permits or authorizations as appropriate, from the following governmental entities: U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; Alabama Department of Environment and Conservation; Tennessee Department of Environment and Conservation; U.S. Fish and Wildlife Service; Alabama State Historic Preservation Officer; Tennessee State Historic Preservation Officer; and Tribal Historic Preservation Officers. This is not an exhaustive list, other permits or authorizations may be sought as required or appropriate.

Public Participation and Scoping Process

The public is invited to submit comments on the scope of the PEIS no later than the date identified in the **DATES** section of this notice. Federal, state, and local agencies and Native American Tribes are also invited to provide comments. Information about this project is available on the TVA web page at *https://www.tva.gov/nepa,* including a link to an online public comment page.

SEIS Preparation and Schedule

Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection. After consideration of comments received during the scoping period, TVA will develop a scoping document that will summarize public and agency comments that were received and identify the schedule for completing the PEIS process.

Following analysis of the resources and issues, TVA will prepare a draft PEIS for public review and comment tentatively scheduled for late 2024/early 2025; the final PEIS and decision is tentatively scheduled for 2025. In finalizing the PEIS and in making its final decision, TVA will consider the comments that it receives on the draft PEIS. A final determination on proceeding with the preferred alternative will be documented in a Record of Decision.

Authority: 40 CFR 1501.9.

Susan Jacks,

General Manager, Environmental Resource Compliance.

[FR Doc. 2023–10653 Filed 5–18–23; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Solar and Battery Programmatic Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: TVA is working to build an energy system powered by cleaner, more flexible energy, and solar and storage will play a big role. TVA has an expansion target of 10,000 megawatts (MW) of solar by 2035. TVA has identified the need to respond more efficiently and effectively to the growing number of solar and battery projects that will be required to achieve TVA's overall decarbonization goals and aspirations. To meet its obligations under the National Environmental Policy Act (NEPA), TVA is preparing a Programmatic Environmental Impact Statement (PEIS) to develop new guidance and a bounding analysis that will further facilitate solar energy and battery energy storage development on TVA-owned and private lands within the TVA service area. TVA would consider this guidance, including recommended environmental practices and mitigation measures, in its decision-making processes.

DATES: To ensure consideration, comments on the scope, alternatives being considered, and environmental issues must be postmarked, emailed, or submitted online no later than June 20, 2023.

ADDRESSES: Written comments should be sent to Elizabeth Smith, NEPA Compliance Specialist, 400 West Summit Hill Dr., WT 11B, Knoxville, TN 37902–1499. Comments may also be submitted online at: *https://www.tva.gov/NEPA* or by email at *NEPA@tva.gov.*

FOR FURTHER INFORMATION CONTACT: For general information about the NEPA process and/or general project information, please contact Elizabeth Smith, NEPA Compliance Specialist, email: *esmith14@tva.gov,* or contact by phone at 865–632–3053.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing NEPA. TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy. As part of its diversified energy strategy, TVA produces or obtains electricity from a diverse portfolio of energy sources, including solar, hydroelectric, wind, biomass, fossil fuel, and nuclear.

The analyses in a programmatic NEPA review are valuable in setting out the broad view of environmental impacts and benefits for a proposed decision such as establishing a policy, program, or plan. That programmatic NEPA review can then be relied upon when agencies make decisions based on the programmatic EIS, as well as decisions based on a subsequent (also known as tiered) NEPA review.

Public comment is invited concerning the scope of the PEIS, alternatives being considered, and environmental issues that should be addressed as a part of this PEIS. TVA is also requesting data, information, and analysis relevant to the proposed action from the public; affected Federal, State, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party.

Background

In June 2019, TVA completed the 2019 Integrated Resource Plan (IRP) and associated EIS. The IRP is a comprehensive study of how TVA will meet the demand for electricity in its service territory over the next 20 years. The 2019 IRP recommends solar expansion and anticipated growth in all scenarios analyzed, with most scenarios anticipating 5,000 to 8,000 MW and one anticipating up to 14,000 MW by 2038, as well as up to 5,300 MW of storage. The IRP recommendation as well as customer demand for cleaner energy has prompted TVA to release multiple Requests for Proposal for renewable energy and carbon-free energy resources since 2019. As of April 2023, TVA currently has over 2,900 MW of solar capacity both operating and contracted.

TVA has identified the need to respond in a more efficient and effective manner to the growing number of solar and battery projects that will be required to meet the target supply identified in the 2019 IRP and to meet TVA's carbon reduction goals. Programmatic environmental guidance would seek to minimize potential negative environmental impacts, minimize social and economic impacts, integrate conservation measures with site development in alignment with the TVA Biodiversity Policy, and standardize and streamline the authorization process for solar energy development through a bounding analysis to help identify the range of potential impacts or risks. TVA's purpose is to promote, expedite, and advance the production and transmission of environmentally sound energy resources, including solar energy and battery storage systems, and increase opportunities for responsible renewable energy development.

Alternatives

The PEIS will evaluate a no action alternative, under which TVA would not develop programmatic environmental guidance and continue to address environmental concerns for TVA-owned and TVA-contracted solar and battery projects on a case-by-case basis. Under the action alternative, TVA would develop programmatic environmental guidance through a bounding analysis to help identify the range of potential impacts or risks for use in TVA-owned and TVA-contracted solar and battery projects. TVA solicits comment on whether there are other alternatives that should be assessed in the PEIS. TVA also requests information and analyses that may be relevant to the project.

Resource Areas and Issues To Be Considered

Public scoping is integral to the process for implementing NEPA and ensures that (1) issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, and (3) the analysis of identified issues is thorough and balanced. This PEIS will identify the purpose and need of the action alternative and will contain descriptions of the existing environmental and socioeconomic resources within the TVA power service area that could be affected by the proposed project. Evaluation of potential environmental impacts to these resources will include, but not be limited to, water resources, biological resources, cultural resources, natural areas and recreation, navigation, utilities, recreation, floodplains, wetlands, geology and groundwater, air quality and climate change, greenhouse gas emissions, land use and prime farmland, noise, public health and safety, socioeconomics and environmental justice, solid and hazardous waste and material, transportation, and visual resources. The PEIS will analyze measures that would avoid, minimize, or mitigate environmental effects.

The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received. TVA is particularly interested in public input on other reasonable alternatives that should be considered in the PEIS. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Public Participation

The public is invited to submit comments on the scope of the PEIS no later than the date identified in the **DATES** section of this notice. Federal, state, and local agencies and Native American Tribes are also invited to provide comments. Written requests to participate as a consulting party or cooperating agency must be received by June 20, 2023. Information about this project is available on the TVA web page at *https://www.tva.gov/NEPA* including a link to an online public comment page. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of comments received during the scoping period, TVA will develop a scoping document that will summarize public and agency comments that were received and identify the schedule for completing the PEIS process. Following analysis of the resources and issues, TVA will prepare a draft PEIS for public review and comment tentatively scheduled for 2024; the final PEIS and decision is tentatively scheduled for 2025.

In finalizing the PEIS and in making its final decision, TVA will consider the comments that it receives on the draft PEIS.

Authority: 40 CFR 1501.9.

Susan Jacks,

General Manager, Environmental Resource Compliance.

[FR Doc. 2023–10654 Filed 5–18–23; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0234]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Bird/Other Wildlife Strike Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 1, 2023. The collection involves voluntary reporting of bird/other wildlife strike information following a wildlife strike incident with aircraft. This data becomes part of the publicly available National Wildlife Strike Database. Strike reports provide critical information that allows the FAA to determine high-risk species, track national trends, evaluate the FAA's wildlife hazard management program, and provide scientific foundation for regulatory guidance. Additionally, this essential information allows engine and airframe manufacturers to evaluate the effectiveness of aircraft components. It also helps airports identify and mitigate hazardous species and the location of wildlife attractants, affords a better understanding of strike dynamics, and provides key metrics for an airport to evaluate the effectiveness of its wildlife management program.

DATES: Written comments should be submitted by June 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: John Weller by email at: *john.weller@faa.gov*; phone: (202) 267–3778.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0045.

Title: Bird/Other Wildlife Strike Report.

Form Numbers: FAA Form 5200–7.

Type of Review: This is a renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 1, 2023 (88 FR 6802). 14 CFR 139.337, Wildlife Hazard Management, requires the FAA to collect wildlife strike data to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. Pilots, airport operations staff, aircraft and airport maintenance personnel, air traffic controllers, wildlife biologists, and anyone else having knowledge of a strike can report incidents to the FAA, primarily using the online version of FAA Form 5200–7. The data becomes part of the publicly available National Wildlife Strike Database used to enhance safety by airports, airlines, engine and airframe manufacturers, and the FAA. Overall, the number of strikes annually reported to the FAA has increased from 1,850 in 1990 to more than 15,556 (12,817 from the public) in 2021.

Respondents: Approximately 12,817 pilots, airport operations staff, aircraft and airport maintenance personnel, wildlife biologists, and others with knowledge of a strike.

Frequency: as needed.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 1,068 hours.

Issued in Washington, DC, on May 15, 2023.

John Weller,

National Wildlife Biologist, Airport Safety and Operations Division, Office of Airports Safety and Standards.

[FR Doc. 2023–10670 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0095; Notice 1]

Toyota Motor North America, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Toyota Motor North America (Toyota) has determined that certain model year (MY) 2023 Subaru Solterra and Toyota bZ4X motor vehicles, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less.* Toyota filed a noncompliance report dated July 29, 2022, and subsequently petitioned NHTSA (the ''Agency'') on August 12, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Toyota's petition.

DATES: Send comments on or before June 20, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than

15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Ahmad Barnes, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Toyota determined that certain MY 2023 Subaru Solterra and Toyota bZ4X motor vehicles do not fully comply with paragraph S4.3(a) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with A GVWR of 4,536 Kilograms (10,000 Pounds) or Less.* (49 CFR 571.110).

Toyota filed a noncompliance report dated July 29, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota petitioned NHTSA on August 12, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Toyota's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 661 MY 2023 Subaru Solterra and Toyota bZ4X motor vehicles, manufactured between March 30, 2022, and June 3, 2022, were reported by the manufacturer.

III. Noncompliance: Toyota explains that the noncompliance is that the subject vehicles are equipped with a tire information placard that incorrectly identifies the vehicle weight capacity of the subject vehicles and, therefore, do not comply with FMVSS No. 110. Specifically, the tire information placard incorrectly states that the vehicle weight capacity is 925 pounds when it should state that the vehicle weight capacity is 1,045 pounds.

IV. Rule Requirements: Paragraph S4.3(a) of FMVSS No. 110 of FMVSS No. 110 includes the requirements relevant to this petition. Paragraph S4.3 of FMVSS No. 110 provides that each vehicle, except for a trailer or incomplete vehicle, is required to show the vehicle weight capacity on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door. If the above locations do not permit the affixing of a placard that is legible, visible, and prominent, the placard shall be permanently affixed to the rear edge of the driver's side door. If this location does not permit the affixing of a placard that is legible, visible, and prominent, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard.

V. Summary of Toyota's Petition: The following views and arguments presented in this section, ''V. Summary of Toyota's Petition,'' are the views and arguments provided by Toyota. They have not been evaluated by the Agency and do not reflect the views of the Agency. Toyota describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Toyota explains that the tire information placard on the subject vehicles provides a vehicle weight capacity that is lower than the actual value. Therefore, Toyota says that vehicle owners referring to the incorrect vehicle capacity weight stated on the tire information placard are not at risk of overloading the subject vehicle beyond the vehicle capacity weight. The tire information placard states that the vehicle capacity weight for the subject vehicle is 925 pounds when it should state that the vehicle weight capacity is 1,045 pounds. Toyota says that if a vehicle owner loads a subject vehicle according to the weight stated on the tire information placard, the subject vehicle would still have an additional 120 pounds of weight capacity.

Toyota contends that NHTSA has previously stated that the ''intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and prevent overloading'' [1] and FMVSS No. 110 states that the purpose of the requirements for tire selection are to ''prevent tire overloading.'' [2]

Because the tire information placard contains a vehicle weight capacity that is lower than the actual weight capacity, Toyota says there is no risk of overloading if the vehicle owner loads the subject vehicle according to the incorrect value. Toyota adds that all other information on the tire information placard is accurate, and Toyota has corrected the subject noncompliance in current production of the subject vehicles.

Furthermore, Toyota says that the Owner's Manual states the correct vehicle capacity weight, and the tire information placard contains the text ''See Owner's Manual for additional information.''

Toyota says that NHTSA previously granted a petition submitted by Mercedes-Benz USA, LLC, (MBUSA) that involved a similar noncompliance.[3] In that case, the affected vehicles were affixed with a tire information placard that contained the incorrect maximum combined weight of occupants and cargo and, therefore, did not comply with the requirements of paragraph S4.3(a) of FMVSS No. 110. The tire information placard in the MBUSA vehicles contained a higher than intended value for the maximum combined weight of occupants and

[1] *See, e.g.,* Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 88728, 88729 (December 8, 2016)

[2] *See* 49 CFR 571.110, paragraph S1.

[3] Mercedes-Benz USA, LLC, (82 FR 33547, July 20, 2017).

cargo; however, the tires and load carrying capabilities of the affected MBUSA vehicles exceeded the incorrect value identified by the tire information placard. Toyota says that NHTSA found that the tire capacities of those vehicles were capable of safely handling the additional weight of the higher vehicle weight capacity that was provided without risk of overloading.

Toyota contends that NHTSA should similarly find that the subject noncompliance is inconsequential to motor vehicle safety because the tire information placard on the subject vehicles provides a vehicle weight capacity that is lower than intended. Due to this, Toyota believes that the subject noncompliance does not pose a risk of vehicle overloading because the vehicle and its tires can accommodate more than the incorrect vehicle capacity weight that is stated on the tire information placard.

Toyota concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–10703 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0092; Notice 2]

Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Volkswagen Group of America, Inc., (Volkswagen), has determined that certain model year (MY) 2021–2022 Volkswagen and Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Volkswagen filed an original noncompliance report dated November 19, 2021, and later amended the report on November 22, 2021, and December 1, 2021. Volkswagen petitioned NHTSA on December 13, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Volkswagen's petition.

FOR FURTHER INFORMATION CONTACT: Syed Rahaman, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–1704.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen has determined that certain MY 2021–2022 Volkswagen and Audi motor vehicles do not fully comply with paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208).

Volkswagen filed an original noncompliance report dated November 19, 2021, and later amended the report on November 22, 2021, and December 1, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen petitioned NHTSA on December 13, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Volkswagen's petition was published with a 30-day public comment period, on March 14, 2022, in the **Federal Register** (87 FR 14322). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2021–0092.''

II. Vehicles Involved: Approximately 48,948 of the following vehicles, manufactured between July 30, 2020, and November 18, 2021, are potentially involved:

- MY 2022 Volkswagen Taos
- MY 2021 Volkswagen ID.4
- MY 2022 Volkswagen Golf R A8
- MY 2022 Volkswagen Golf GTI
- MY 2022 Audi S3 Sedan
- MY 2022 Audi A3 Sedan

III. Noncompliance: Volkswagen explains that the owner's manual for the subject vehicles incorrectly states the length of time the ''Passenger Air Bag On'' light is illuminated while the air bag is active and therefore, does not meet the requirements of paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208. Specifically, when the air bag is activated, the ''Passenger Air Bag On'' light will blink for 5 seconds, remain illuminated for 60 seconds, and then go out. However, the owner's manual inaccurately states that the light will remain illuminated permanently when the air bag is on.

IV. Rule Requirements: Paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208 include the requirements relevant to this petition. The owner's manual for any vehicle equipped with an inflatable restraint system shall include an accurate description of the vehicle's air bag system in an easily understandable format. The manufacturer is required to include in the vehicle owner's manual a discussion of the advanced passenger air bag system installed in the vehicle. The discussion must explain the proper functioning of the advanced air bag system and provide a summary of the actions that may affect the proper functioning of the system. The discussion shall include accurate information on (1) an explanation of how the components function together as part of the advanced passenger air bag system and (2) a discussion of the telltale light, specifying its location in the vehicle and explaining when the light is illuminated.

V. Summary of Volkswagen's Petition: The following views and arguments presented in this section, ''V. Summary of Volkswagen's Petition,'' are the views and arguments provided by Volkswagen. They do not reflect the views of the Agency. Volkswagen describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Volkswagen says that although the owner's manual does not accurately state the duration of time that the ''Passenger Air Bag On'' light is illuminated, the light ''is neither required nor regulated'' by FMVSS No. 208. Volkswagen contends that although the light does not remain illuminated, the ''system itself is switched on, is ready to function, and is otherwise accurately described within the owner's manual.''

Volkswagen explains that the owner's manual for the subject vehicles ''provides an explanation of how the system's components function together, as well as how the ''Passenger Air Bag Off'' light functions,'' as required by FMVSS No. 208. Volkswagen further explains that the owner's manual also provides ''a presentation and explanation of the main components of the advanced passenger air bag system, an explanation of how the components function, and the basic requirements for proper operations, among other important relevant safety information.''

Volkswagen notes that it has corrected the noncompliance for vehicles still in its control by adding a supplemental page with the accurate information into the owner's manual.

Volkswagen states that it is aware of one customer inquiry related to the subject noncompliance which has been resolved but is not aware of any accidents or injuries that have occurred as a result of the subject noncompliance.

Volkswagen concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[1] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[2]

NHTSA agrees with Volkswagen that the Passenger Air Bag On indicator is not required by FMVSS No. 208. The Passenger Air Bag Off indicator is required by FMVSS No. 208 and appears to meet the requirements, *i.e.,* it remains illuminated and its functionality is described accurately in the owner's manual.

As Volkswagen has stated, the vehicle itself functions as intended for both the On and Off indicators. If Volkswagen had not implemented the On indicator and had no owner's manual information for the On indicator, there would not be a noncompliance. Further, if such a situation existed, there would be no degradation to safety as it relates to the FMVSSs.

If the air bag was inactive, by either the vehicle determining air bag suppression is necessary or by the seat being unoccupied, the Off indicator would then illuminate and remain illuminated. This provides clear communication to the vehicle occupants.

The disparity between the behavior of the On indicator and the description of its operation in the vehicle owner's manual may cause confusion to owners who carefully review that document as it could lead them to the belief that the air bag is not in an On condition when in fact it is. While the existence of this disparity is a matter of concern and may have customer satisfaction consequences for the manufacturer, NHTSA does not find that a safety consequence exists in this case.

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by Volkswagen and has determined that this particular noncompliance is inconsequential to motor vehicle safety. The inaccurate owner's manual description for the non-required Passenger Air Bag On indicator is inconsequential to the safety of the vehicles listed above. This does not imply that all inaccurate owner's manual descriptions would be considered inconsequential, but rather NHTSA agrees that this particular case is inconsequential.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Volkswagen has met its burden of persuasion that the subject FMVSS No. 208 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is hereby granted, and Volkswagen is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–10702 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–59–P

[1] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[2] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016); *see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0112; Notice 1]

Rivian Automotive, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Rivian Automotive, LLC (Rivian) has determined that certain model year (MY) 2022 Rivian Electric Delivery Van (EDV) motor vehicles do not fully comply with Federal Motor

Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Rivian filed a noncompliance report dated October 24, 2022, and amended the report on November 14, 2022. Rivian subsequently petitioned NHTSA (the ''Agency'') on November 15, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Rivian's petition.

DATES: Send comments on or before June 20, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Syed Rahaman, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7018.

SUPPLEMENTARY INFORMATION:

I. *Overview:* Rivian determined that certain MY 2022 Rivian EDV motor vehicles do not fully comply with paragraph S4.5.1(b)(5)(i) of FMVSS No. 208, Occupant Crash Protection (49 CFR 571.208).

Rivian filed a noncompliance report dated October 24, 2022, and amended the report on November 14, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Rivian petitioned NHTSA on November 15, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Rivian's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 1,278 MY 2022 Rivian EDV motor vehicles, manufactured between December 10, 2021, and September 27, 2022, were reported by the manufacturer.

III. Noncompliance: Rivian explains that a label displaying the subject vehicle's clearance height is affixed to the same side of the sun visor containing the air bag warning label, therefore, the subject vehicles do not comply with paragraph S4.5.1(b)(5)(i) of FMVSS No. 208.

IV. Rule Requirements: Paragraph S4.5.1(b)(5)(i) of FMVSS No. 208 includes the requirements relevant to this petition. S4.5.1(b)(5)(i) requires that except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of FMVSS No. 208, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of FMVSS No. 105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed.

V. Summary of Rivian's Petition: The following views and arguments presented in this section, ''V. Summary of Rivian's Petition,'' are the views and arguments provided by Rivian. They have not been evaluated by the Agency and do not reflect the views of the Agency. Rivian describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Rivian states that the air bag warning label that is affixed to the sun visor in the subject vehicles meets the FMVSS No. 208 content requirements and is displayed as intended by the standard. In addition to this compliant label, there is another label affixed to the sun visor that indicates the clearance height of the subject vehicle. Rivian believes that the vehicle clearance height label included on the sun visor is inconsequential to motor vehicle safety because the subject vehicles are exclusively used in a single fleet of delivery vehicles that are driven by professional drivers. Rivian explains that the subject vehicles are walk-in vans in which the driver's seat is the only designated seating position and drivers are required to wear their seatbelts when operating the subject vehicle. Because of the vehicle's intended usage, Rivian believes that the subject noncompliance does not affect the efficacy of the information provided by the air bag warning label.

Furthermore, Rivian contends that the purpose of the requirement that no other information be present with the air bag warning label is to mitigate ''the potential for children to be placed at a seating position that is equipped with an air bag and also inform of the precautions the vehicle occupant may take to protect themselves from being injured by a deploying air bag'' Rivian believes that this is not a risk because there is no expectation that a child would be present in or around the subject vehicle. Rivian states that if a child were to occupy the driver's seat, the brake transmission shift interlock that is required by FMVSS No. 114 would prevent the child from operating the vehicle, thus there would be no way for the air bags to be deployed.

Additionally, Rivian says that the drivers of the subject vehicles are required to use the seatbelt at all times and the information provided by the air bag warning label is visible, easy to read, and not positioned near the vehicle clearance height label. Therefore, Rivian believes that there is no indication that the addition of the noncompliant vehicle clearance height label would cause a driver of the subject vehicle to confuse the message of the air bag warning label.

Rivian believes that the reason NHTSA determined that no other types of information are allowed to be displayed on the same side of the sun visor as the air bag warning label was to maximize the effectiveness of the label's content by ensuring that there is consistent and uniform messaging to consumers. Rivian quotes NHTSA's decision on a similar petition from Maserati: ''The purpose of [the air bag warning label in] FMVSS No. 208 is to reduce the adverse effects of air bags by attracting the attention of vehicle occupants to look for the air bag warning label on the sun visor.'' [1]

Rivian contends that in past inconsequentiality petitions, NHTSA determined ''that the manner in which a particular subset of vehicles is used bears upon the inconsequential nature of the air bag warning label noncompliance.'' Further, Rivian says that NHTSA has previously granted inconsequentiality for a noncompliance involving the placement of the air bag warning label in a vocational vehicle and found that due to the nature and intended use of the affected vehicles, it would be unlikely for children to be placed in the front passenger seating area.[2]

Rivian adds that NHTSA granted prior petitions in which the air bag warning label deviated from the exact language that is required by the standard.[3] Although those petitions related to the language that was used in the advanced air bag warning label, Rivian contends that NHTSA's rationale for those determinations still applies in the present case.

Rivian states that the subject noncompliance has been corrected for vehicles in production. Rivian says it is not aware of any crash, death, injury, field report, or claims related to the subject noncompliance.

Rivian concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Rivian no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Rivian notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–10704 Filed 5–18–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Change to Funding Opportunity; Bank Enterprise Award Program

Funding Opportunity Title: Change to Notice of Funds Availability (NOFA) inviting Applications for grants under the Bank Enterprise Award Program (BEA Program).

Action: Change of Application deadline, and change of deadlines to contact BEA Program staff and AMIS–IT Help Desk staff.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.021.

Executive Summary: On April 3, 2023, the Community Development Financial Institutions Fund (CDFI Fund) published a Notice of Funds Availability (NOFA) for grants under the Bank Enterprise Award Program (BEA Program) in the **Federal Register** (88 FR 19715) announcing the availability of approximately $70 million in grants, pursuant to the Consolidated Appropriations Act, 2023 (Pub. L. 117–328). The CDFI Fund is issuing this notice to amend five deadlines contained within the NOFA. The amended deadlines are listed in Table A below.

TABLE A—REVISED DEADLINES FOR BEA PROGRAM APPLICANTS

Description	Original deadline	Revised deadline
Grant Application Package/SF–424 Mandatory (Application for Federal Assistance).	11:59 p.m. ET on May 2, 2023	No change.
Last day to register a user and organization in AMIS	5:00 p.m. ET on May 2, 2023	No change.
Last day to enter, edit or delete BEA transactions and verify addresses/census tracts in AMIS.	5:00 p.m. ET on May 30, 2023	5:00 p.m. ET on June 6, 2023.
Last day to contact BEA Program Staff re: BEA Program Application materials.	5:00 p.m. ET on May 30, 2023	5:00 p.m. ET on June 6, 2023.
Last day to contact CDFI Fund with questions about Compliance or CDFI Certification.	5:00 p.m. ET on May 30, 2023	5:00 p.m. ET on June 6, 2023.
Last day to contact IT Help Desk re: AMIS support and submission of the FY 2023 BEA Program Electronic Application in AMIS.	5:00 p.m. ET on June 1, 2023	5:00 p.m. ET on June 8, 2023.
Submit completed FY 2023 BEA Program Electronic Application	5:00 p.m. ET on June 1, 2023	5:00 p.m. ET on June 8, 2023.

[1] *See* Grant of Petition of Maserati, 87 FR 54749, September 7, 2022).

[2] *See* Grant of Petition of Spartan Motors, 81 FR 87654, December 5, 2016

[3] *See* Grant of Petition to Bentley Motors, 72 FR 71734, December 12, 2007; *see also* Grant of Petition to BMW, 71 FR 78511, December 29, 2006.

All other deadlines shall remain in accordance with the NOFA published on April 3, 2023.

I. Agency Contacts

A. General information and CDFI Fund support: The CDFI Fund will respond to questions concerning the NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA was published through the dates listed in this notice. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS service request to the CDFI BEA Program, Office of Certification Policy and Evaluation, the Office of Compliance Monitoring and Evaluation, or IT Help Desk. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.*

B. The CDFI Fund's contact information is as follows:

TABLE B—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
CDFI BEA Questions	Service Request via AMIS	202–653–0421	*bea@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

C. Communication with the CDFI Fund. The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

Authority: Pub. L. 117–328; 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: May 16, 2023.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–10767 Filed 5–18–23; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions; Sanctions Actions Pursuant to Executive Order 13662

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person who is no longer subject to the prohibitions imposed pursuant to Executive Order 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine.''

DATES: OFAC's actions described in this notice were effective on May 12, 2023.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available from OFAC's website at *http://www.treasury.gov/ofac.*

Notice of OFAC Actions

On May 12, 2023, OFAC removed from the Sectoral Sanctions Identification List (SSI List) the person listed below, who was subject to prohibitions imposed pursuant to E.O. 13662.

Entity

1. SKODA JS A.S., Orlik 266, Plzen—mesto PSC 316 06, Plzen, Czech Republic; Executive Order 13662 Directive Determination—Subject to Directive 1; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; For more information on directives, please visit the following link: *https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives* [UKRAINE–EO13662] (Linked To: GAZPROMBANK JOINT STOCK COMPANY).

Dated: May 12, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–10699 Filed 5–18–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. OFAC is also publishing an update to the identifying information of one person currently included on the SDN List.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

Notice of OFAC Actions

A. On April 12, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. KOSOV, Nikolay Nikolayevich (a.k.a. KOSOV, Nikolai), Budapest, Hungary; DOB 30 Jun 1955; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA–EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

2. LASZLOCZKI, Imre, Budapest, Hungary; DOB 26 Sep 1961; POB Paks, Hungary; nationality Hungary; Gender Male (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

3. POTAPOV, Georgy Nugzarovich (a.k.a. POTAPOV, Georgiy), Budapest, Hungary; DOB 26 May 1975; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

4. ATTIKOURIS, Kyriakos, Cyprus; DOB 09 May 1980; POB Limassol, Cyprus; nationality Cyprus; Gender Male; National ID No. 813057 (Cyprus) (individual) [RUSSIA–EO14024] (Linked To: WINDFEL PROPERTIES LIMITED; Linked To: SAVOLER DEVELOPMENT LIMITED; Linked To: MIRAMONTE INVESTMENTS LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Windfel Properties Limited, Savoler Development Ltd, and Miramonte Investments Ltd, entities whose property and interests in property are blocked pursuant to E.O. 14024.

5. GEORGIOU, Marilena, Cyprus; DOB 31 Oct 1987; POB Cyprus; nationality Cyprus; Gender Female (individual) [RUSSIA–EO14024] (Linked To: ALMENOR HOLDINGS LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Almenor Holdings Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

6. GIANNAKOU, Kostas (a.k.a. YIANNAKOU, Costas), Cyprus; DOB 24 Jul 1970; Gender Male (individual) [RUSSIA–EO14024] (Linked To: ALMENOR HOLDINGS LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Almenor Holdings Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

7. KOCHAROVA, Gulnoz Zunnurovna (a.k.a. ISMAILOVA, Gulnoz Zunnurovna), Russia; Cyprus; Switzerland; DOB 04 Oct 1982; POB Tashkent, Uzbekistan; nationality Russia; alt. nationality Cyprus; citizen Uzbekistan; Gender Female; Passport K00224544 (Cyprus) issued 28 May 2015 expires 28 May 2025 (individual) [RUSSIA–EO14024] (Linked To: ALMENOR HOLDINGS LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Almenor Holdings Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

8. VAKANAS, Antonis Kyriakou, Cyprus; DOB 20 Jun 1977; citizen United Kingdom; Gender Male (individual) [RUSSIA–EO14024] (Linked To: WINDFEL PROPERTIES LIMITED; Linked To: SAVOLER DEVELOPMENT LIMITED; Linked To: MIRAMONTE INVESTMENTS LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Windfel Properties Limited, Savoler Development Ltd, and Miramonte Investments Ltd, entities whose property and interests in property are blocked pursuant to E.O. 14024.

9. VINER, Natan Adadievich (a.k.a. VINER, Anton Adadyevich; a.k.a. VINER, Natan Adadievic; a.k.a. VINER, Nathan Anton), Russia; Kapu iela, Jurmala, Latvia; DOB Oct 1971; alt. DOB 1973; POB Tashkent, Uzbekistan; nationality Germany; citizen Russia; Gender Male; Tax ID No. 772986203232 (Russia) (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

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10. SKOCH, Varvara Andreevna (Cyrillic: СКОЧ, Варвара Андреевна) (a.k.a. SKOCH, Varvara Andreyevna), 34 Woronzow Road, St. John's Wood, London NW8 6AT, United Kingdom; DOB 19 May 2002; POB Moscow, Russia; citizen Russia; alt. citizen Cyprus; Gender Female; National ID No. 1287920 (Cyprus); Tax ID No. 773009211904 (Russia) (individual) [RUSSIA-EO14024] (Linked To: SKOCH, Andrei Vladimirovich).

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Andrei Vladimirovich Skoch, whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

11. SKOCH, Vladimir Nikitovich (Cyrillic: СКОЧ, Владимир Никитович), Russia; DOB 05 Jul 1933; POB Kobylne, Rozovsky District, Zaporozhye Region, Ukraine; citizen Russia; Gender Male; Tax ID No. 500101834750 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

12. STRESHINSKAYA, Natalia Alexeevna (a.k.a. DAVYDOVA, Natalya; a.k.a. STRESHINSKAYA, Natalia Alekseyevna; a.k.a. STRESHINSKAYA, Natalya; a.k.a. "Tetya Motya"), Posledniy Per. 14, Apt #6, Moscow 107045, Russia; 65 Route de Bievres, Verrieres-le-Buisson 91370, France; DOB 14 Nov 1982; POB Smolensk, Russia; nationality Russia; alt. nationality Cyprus; Gender Female; Passport 721644521 (Russia) issued 22 Oct 2012 expires 13 Mar 2022; alt. Passport K00481386 (Cyprus) issued 03 Oct 2019 expires 03 Oct 2029 (individual) [RUSSIA-EO14024] (Linked To: STRESHINSKIY, Vladimir Yakovlevich).

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Vladimir Yakovlevich Streshinskiy, whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

13. STRESHINSKIY, Vladimir Yakovlevich (a.k.a. STRESHINSKII, Vladimir Yakovlevich; a.k.a. STRESHINSKIY, Ivan Yakovlevich; a.k.a. STRESHINSKY, Ivan), Russia; Switzerland; 65 Route de Bievres, Verrieres-le-Buisson 91370, France; DOB 02 Oct 1969; POB Kyiv, Ukraine; nationality Russia; alt. nationality Israel; alt. nationality Cyprus; Gender Male; Passport 550017197 (Russia) expires 21 Dec 2027; alt. Passport 29352365 (Israel); alt. Passport K00112834 (Cyprus) issued 13 Feb 2013 expires 13 Feb 2023; Tax ID No. 773126850502 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of USM Holdings, Megafon PAO, and Metalloinvest, entities whose property and interests in property are blocked pursuant to E.O. 14024.

14. FIROV, Alim Khazkhismelovich (Cyrillic: ФИРОВ, Алим Хажисмелович), Russia; DOB 09 Nov 1984; POB Kakhun, Russia; nationality Russia; citizen Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: DEXIAS INTERNATIONAL PRODUCTS AND TRADE LIMITED COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Dexias Industrial Products and Trading Limited Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

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15. ISMAILOVA, Gulbakhor Burkhanovna (a.k.a. ISMAILOVA, Gulbahor Burkhanovna), Ustabayava 79, Apt 81–831, Tashkent 100187, Uzbekistan; DOB 22 Dec 1959; POB Tashkent, Uzbekistan; nationality Uzbekistan; alt. nationality Russia; alt. nationality Cyprus; Gender Female (individual) [RUSSIA–EO14024] (Linked To: THE SISTER TRUST).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, The Sister Trust, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. SERGHIDES, Demetrios (a.k.a. SERGHIDES, Demetris; a.k.a. SERGIDIS, Dimitrios), 29 Kosta Pitsillide, Limassol, Cyprus; 35 Avenue de Papalins, Les Sporades, Flat 914, Monaco 98000, Monaco; 6ET N.600 8, Villa Rose, 2 Lacets Saint Leon, Monaco 98000, Monaco; Italy; DOB 18 Dec 1968; POB Limassol, Cyprus; nationality Cyprus; Gender Male; Passport K00162863 (Cyprus) issued 18 Feb 2014 expires 18 Feb 2024; National ID No. 670766 (Cyprus); Tax ID No. SRGDTR68T18Z211K (Italy) (individual) [RUSSIA–EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

17. EFENDIEV, Nazim Tofik Ogly, 17–3 Protopopovsky Pereulok, Apt. 66, Moscow 129090, Russia; DOB 16 Sep 1963; POB Baku, Azerbaijan; nationality Russia; Gender Male; Passport 530325856 (Russia) issued 07 Feb 2013 expires 22 Oct 2022; alt. Passport 753519704 (Russia) issued 30 Jul 2016 expires 30 Jul 2026; alt. Passport 764735608 (Russia) issued 02 Jun 2021 expires 02 Jun 2031; National ID No. 4508499921 (Russia) (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

18. KAZIKAEV, Valery Dzhekovich (a.k.a. KAZIKAEV, Valeri; a.k.a. KAZIKAEV, Valery Dzekovic; a.k.a. KAZIKAYEV, Valeriy Dzhekovich), Italy; Znievska 3060/8, Bratislava-Petrzalka 85106, Slovakia; Russia; DOB 13 Nov 1954; POB Moscow, Russia; nationality Russia; Gender Male; Passport 531143127 (Russia) issued 30 Jun 2016 expires 30 Jun 2026; Tax ID No. KZKVRY54S13Z154C (Italy) (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

19. KOCHAROV, Vakhtang Ernstovich, Russia; United Arab Emirates; DOB 03 Mar 1982; POB Baku, Azerbaijan; nationality Russia; alt. nationality Cyprus; Gender Male; Passport K00224516 (Cyprus) expires 28 May 2025 (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

20. NARZIEVA, Nasiba Erkinovna, Uzbekistan; DOB 30 Jun 1984; POB Tashkent, Uzbekistan; nationality Uzbekistan; Gender Female; Passport AA0124604 (Uzbekistan) issued 21 Jun 2016 expires 20 Jun 2022; alt. Passport FA0002578 (Uzbekistan) expires 14 Jan 2029; alt. Passport CA2609496 (Uzbekistan) issued 01 Jun 2009 expires 29 Jun 2029 (individual) [RUSSIA–EO14024] (Linked To: NASIRKHODJAEV, Shokhrukh Olimdjonovich).

Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Shokhrukh Olimdjonovich Nasirkhodjaev, whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

21. NARZIEVA, Saodat Burxanovna, Uzbekistan; DOB 15 May 1965; POB Uzbekistan; nationality Uzbekistan; Gender Female; Passport AA1333009 (Uzbekistan) issued 08 May 2013 expires 07 May 2023 (individual) [RUSSIA–EO14024] (Linked To: NASIRKHODJAEV, Shokhrukh Olimdjonovich).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Shokhrukh Olimdjonovich Nasirkhodjaev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. NASIRKHODJAEV, Shokhrukh Olimdjonovich (a.k.a. NASIRKHODJAEV, Shokrukh), United Arab Emirates; Uzbekistan; DOB 07 Sep 1980; POB Tashkent, Uzbekistan; nationality Uzbekistan; Gender Male; Passport AA0615681 (Uzbekistan) issued 04 Jan 2013 expires 04 Jan 2023; alt. Passport CA2645862 (Uzbekistan) issued 02 Jun 2009 expires 06 Sep 2025; alt. Passport FA0163946 (Uzbekistan) expires 24 Mar 2029 (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Hamriyah Steel Free Zone Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

23. GIGER, Markus Jakob, Bildgass 30, Schaan 9494, Liechtenstein; Switzerland; DOB 17 Aug 1955; POB St. Gallen, Switzerland; nationality Switzerland; alt. nationality United Kingdom; Gender Male; Passport X0192937 (Switzerland) expires 10 Apr 2026; National ID No. 040002130001 (United Kingdom) (individual) [RUSSIA–EO14024] (Linked To: SEQUOIA TREUHAND TRUST REG).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Sequoia Treuhand Trust Reg, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

24. OEHRI, Roland (a.k.a. OHRI, Roland), Liechtenstein; Austria; DOB 19 Mar 1968; POB Liechtenstein; nationality Liechtenstein; alt. nationality Switzerland; Gender Male; Passport R 41277 (Liechtenstein) expires 23 Mar 2030 (individual) [RUSSIA–EO14024] (Linked To: SEQUOIA TREUHAND TRUST REG).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Sequoia Treuhand Trust Reg, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

25. OSTROWSKY, Alexander (a.k.a. OSTROUSKY, Alexander), Zurich, Switzerland; DOB 21 Aug 1963; nationality Austria; alt. nationality Switzerland; citizen Austria; Gender Male; Passport X3278664

(Switzerland) (individual) [RUSSIA–EO14024] (Linked To: SEQUOIA TREUHAND TRUST REG).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Sequoia Treuhand Trust, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Entities

1. AZU INTERNATIONAL BILGI TEKNOLOJILERI VE DIS TICARET LIMITED SIRKETI (Latin: AZU INTERNATIONAL BILGI TEKNOLOJILERI VE DIŞ TICARET LIMITED ŞIRKET) (a.k.a. AZU INTERNATIONAL BILGI TEKN VE DIS TI LTD STI; a.k.a. AZU INTERNATIONAL INFORMATION TECHNOLOGIES AND FOREIGN TRADE LIMITED COMPANY), Huseyinaga neighborhood Istiklal Str., Grandpera Block No: 56–58 Inner door No: 5, Beyoglu, Istanbul, Turkey; Organization Established Date 30 Mar 2022; Organization Type: Wholesale of electronic and telecommunications equipment and parts; Registration Number 371692–5 (Turkey); alt. Registration Number 0127108975400001 (Turkey) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 for operating or having operated in the technology and electronics sectors of the Russian Federation economy.

2. MIRAMONTE INVESTMENTS LIMITED, Louloupis Court, Floor No: 7, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; Organization Established Date 06 Apr 2021; Registration Number C420204 (Cyprus) [RUSSIA–EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. SAVOLER DEVELOPMENT LIMITED, Louloupis Court, Floor No: 7, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; Organization Established Date 10 Oct 2016; Registration Number C360999 (Cyprus) [RUSSIA–EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. SOMMEN SECRETARIAL SERVICES LIMITED, Louloupis Court, Floor No: 6, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; Organization Established Date 24 Sep 2013; Registration Number C325384 (Cyprus) [RUSSIA–EO14024] (Linked To: WINDFEL PROPERTIES LIMITED; Linked To: SAVOLER DEVELOPMENT LIMITED; Linked To: MIRAMONTE INVESTMENTS LIMITED).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Windfel Properties Limited, Savoler Development Ltd, and Miramonte Investments Ltd, persons whose property and interests in property are blocked pursuant to E.O. 14024.

5. WINDFEL PROPERTIES LIMITED (a.k.a. PREDSTAVITELSTVO WINDFEL PROPERTIES LIMITED), Louloupis Court, Floor No: 7, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; Mustakillik 59A, Tashkent, Uzbekistan; Organization Established Date 09 Sep 2016; Legal Entity Number 2180068XRFK54K3Z159; Registration Number C359911 (Cyprus); alt. Registration Number 207288668 (Uzbekistan) [RUSSIA–EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. GKR NEDVIZHIMOST OOO, ul. Petrovka d. 17, str. 4, et 1 pom. VII kom 7, Moscow 107031, Russia; Organization Established Date 15 Apr 2014; Tax ID No. 7702836342 (Russia); Registration Number 1147746418291 (Russia) [RUSSIA–EO14024] (Linked To: VINER, Natan Adadievich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Natan Adadievich Viner, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. GKR OOO, ul. Dmitrovka M. d. 18A, str. 3, floor 3 office 1, Moscow 127006, Russia; Organization Established Date 27 Jun 2014; Tax ID No. 7702840557 (Russia); Registration Number 1147746723288 (Russia) [RUSSIA–EO14024] (Linked To: VINER, Natan Adadievich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Natan Adadievich Viner, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. GKR UK OOO, ul. Selskokhozyaistvennaya d. 26, str. 6, floor/pomeshch. 2/II, kom. 7, Moscow 129226, Russia; Organization Established Date 12 Oct 2021; Tax ID No. 9717106688 (Russia); Registration Number 1217700485122 (Russia) [RUSSIA–EO14024] (Linked To: VINER, Natan Adadievich).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

9. GRUPPA RODINA OOO (a.k.a. RODINA GROUP), ul. Dmitrovka M. d. 18A, str. 3, et 3 pom. X office 3, Moscow 127006, Russia; Organization Established Date 24 Jan 2020; Tax ID No. 7707437415 (Russia); Registration Number 1207700022364 (Russia) [RUSSIA–EO14024] (Linked To: VINER, Natan Adadievich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Natan Adadievich Viner, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. INVESTITSIONNAYA GRUPPA PARTNERY OOO, ul. Selskokhozyaistvennaya d. 26, str. 6, pomeshch. II, kab. 20, Moscow 129226, Russia; Organization Established Date 06 Apr 2017; Tax ID No. 7703425497 (Russia); Registration Number 1177746351276 (Russia) [RUSSIA–EO14024] (Linked To: VINER, Natan Adadievich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Natan Adadievich Viner, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. RODINA STROI GRUPP OOO, ul. Dmitrovka M. d. 18A, str. 3, floor 3/office 5, Moscow 127006, Russia; Organization Established Date 18 Jul 2014; Tax ID No. 7702841712 (Russia); Registration Number 1147746813202 (Russia) [RUSSIA–EO14024] (Linked To: VINER, Natan Adadievich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Natan Adadievich Viner, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. PLATIFINO LIMITED, 4th Floor, Queen Victoria House, 41–43 Victoria Street, Douglas IM1 2LF, Man, Isle of; Organization Established Date 25 Apr 2014; Registration Number 011037V (Man, Isle of) [RUSSIA–EO14024] (Linked To: STRESHINSKIY, Vladimir Yakovlevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vladimir Yakovlevich Streshinskiy, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. INTERNATIONAL INVESTMENT BANK (a.k.a. MEZHDUNARODNY INVESTITSIONNY BANK; a.k.a. ''IIB''), Vaci ut, 188, Budapest H–1138, Hungary; Fo utca 1, Budapest H–1011, Hungary; 7 Mashi Poryvaevoy Street, Moscow 107078, Russia; SWIFT/BIC IIBMHU22; website *www.iib.int;* Organization Established Date 10 Jul 1970; Target Type Financial Institution; Tax ID No. 30479900–1–51 (Hungary); alt. Tax ID No. 9909152110 (Russia); Legal Entity Number 2534000PHLD27VN98Y03 [RUSSIA–EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to this order.

14. JOINT STOCK COMPANY IIB CAPITAL (a.k.a. AO MIB KAPITAL; a.k.a. CJSC IIB CAPITAL), ul. Mashi Poryvaevoi d. 11, str. B, floor 1, pomeshch. 15, Moscow

107078, Russia; Organization Established Date 25 Jul 2012; Tax ID No. 7708767021 (Russia); Registration Number 1127746575516 (Russia) [RUSSIA–EO14024] (Linked To: INTERNATIONAL INVESTMENT BANK).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, International Investment Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

15. DEXIAS INTERNATIONAL PRODUCTS AND TRADE LIMITED COMPANY (Latin: DEXIAS ENDÜSTRIYEL ÜRÜNLER VE TICARET LIMITED ŞIRKETI) (a.k.a. DEXIAS IPTLC), Mecidiyekoy Street, Bloc No: 12/221, Kushtepe Neighborhood, Sisli, Istanbul, Turkey; Organization Established Date 20 Jul 2022; Tax ID No. 2931074985 (Turkey); Registration Number 394044–5 (Turkey) [RUSSIA–EO14024] (Linked To: RADIOAVTOMATIKA LLC).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Radioavtomatika LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. DEXIAS LIMITED LIABILITY COMPANY (a.k.a. DEXIAS LLC (Cyrillic: OOO ДЕКСИАС); f.k.a. MAINBOX LIMITED LIABILITY COMPANY; f.k.a. "MAINBOX LLC"; f.k.a. "TSOFT LLC"; f.k.a. "TSOFT OOO"), UL Ryabinovaya D. 3, K. 2, KV. 261, Moscow 121471, Russia; Organization Established Date 15 Jul 2016; Tax ID No. 7702403726 (Russia); Government Gazette Number 03555170 (Russia); Registration Number 1167746674644 (Russia) [RUSSIA-EO14024] (Linked To: FIROV, Alim Khazkhismelovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alim Khazkhismelovich Firov, a person whose property and interests in property are blocked pursuant to this order.

17. AEROMOTUS UNMANNED AERIAL VEHICLES TRADING LLC (Arabic: اروموتس لتجارة الطائرات التي تعمل بدون طيار ش.ذ.م.م), Dubai, United Arab Emirates; Organization Established Date 31 Jan 2017; Organization Type: Wholesale of other machinery and equipment; Registration Number 10951485 (United Arab Emirates); alt. Registration Number 775265 (United Arab Emirates); alt. Registration Number 1268139 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 for operating or having operated in the technology and aerospace sectors of the Russian Federation economy.

18. ALMENOR HOLDINGS LIMITED, Louloupis Court, Floor No: 7, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; Organization Established Date 30 Jan 2018; Registration Number C379400 (Cyprus) [RUSSIA–EO14024] (Linked To: THE SISTER TRUST).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, The Sister Trust, a person whose property and interests in property are blocked pursuant to E.O. 14024.

19. HIGHTRAIL LTD, Louloupis Court, 6th Floor, Christodoulou Chatzipaylou 205, Limassol 3036, Cyprus; Organization Established Date 24 Nov 2021; Registration Number C428257 (Cyprus) [RUSSIA–EO14024] (Linked To: SERGHIDES, Demetrios).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Demetrios Serghides, a person whose property and interests in property are blocked pursuant to E.O. 14024.

20. KLARET AVIATION LIMITED, Louloupis Court, Floor No: 7, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; 720 West Bay Road, P.O. Box 601, Buckingham Square, Grand Cayman KY1–9006, Cayman Islands; Organization Established Date 01 Feb 2018; Registration Number O3170 (Cyprus) [RUSSIA–EO14024] (Linked To: THE SISTER TRUST).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, The Sister Trust, a person whose property and interests in property are blocked pursuant to E.O. 14024.

21. NAVIS MARINE LIMITED, 720 West Bay Road, P.O. Box 601, Buckingham Square, Grand Cayman KY1–9006, Cayman Islands; Organization Established Date 02 Feb 2018; Registration Number 332478 (Cayman Islands) [RUSSIA–EO14024] (Linked To: THE SISTER TRUST).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, The Sister Trust, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. OMNIA ANTIBES, Centre d Affaires Le Forum, 33 Boulevard du General Leclerc, Beausoleil 06240, France; Organization Established Date 25 Jun 2018; Tax ID No. 840939516 (France); Identification Number 840939516–00034 (France) [RUSSIA–EO14024] (Linked To: SERGHIDES, Demetrios).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Demetrios Serghides, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. OMNIA SERVICES CYPRUS LTD, Louloupis Court, Floor No: 6, Christodoylou Chatzipaylou 205, Limassol 3036, Cyprus; Organization Established Date 16 Jul 2018;

Registration Number C386392 (Cyprus) [RUSSIA–EO14024] (Linked To: SERGHIDES, Demetrios).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Demetrios Serghides, a person whose property and interests in property are blocked pursuant to E.O. 14024.

24. POMEROL CAPITAL SA, Place des Eaux-Vives 6, Geneva 1207, Switzerland; Organization Established Date 29 Mar 2021; Tax ID No. 143003237 (Switzerland); Identification Number DBF5PV.00764.SF.756 (Switzerland); Registration Number CH–660.1.066.021–8 (Switzerland) [RUSSIA–EO14024] (Linked To: THE SISTER TRUST).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, The Sister Trust, a person whose property and interests in property are blocked pursuant to E.O. 14024.

25. THE SISTER TRUST, Switzerland; Bermuda; Organization Established Date 26 Jul 2016; Identification Number DBF5PV.00765.SF.756 (Switzerland) [RUSSIA–EO14024] (Linked To: SERGHIDES, Demetrios).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Demetrios Serghides, a person whose property and interests in property are blocked pursuant to E.O. 14024.

BILLING CODE 4810–AL–P

26. HULM AL SAHRA ELECTRIC DEVICES TRADING (Arabic: حلم الصحراء لتجارة الاجهزه الكهربائيه) (a.k.a. HULM AL SAHRA ELECT DEVICES TR; a.k.a. HULM AL SAHRA ELECTRIC DEVICES TRADING LTD), Building 38 Industrial Area No. 1, Al Dhaid City, Sharjah, United Arab Emirates; PO Box 62105, Sharjah, United Arab Emirates; Organization Established Date 21 Apr 1999; Organization Type: Wholesale of electronic and telecommunications equipment and parts; Registration Number 11166971 (United Arab Emirates); alt. Registration Number 501015 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 for operating or having operated in the technology and electronics sectors of the Russian Federation economy.

27. KTH GROUP SPOL SRO, Teslova 18211/15, Bratislava 82102, Slovakia; Organization Established Date 22 Jun 1995; Tax ID No. 2020940834 (Slovakia); Registration Number 31396879 (Slovakia) [RUSSIA-EO14024] (Linked To: KAZIKAEV, Valery Dzhekovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Valery Dzhekovich Kazikaev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

28. KING-PAI TECHNOLOGY (HK) CO., LIMITED (Chinese Simplified: 金派科技(香港)有限公司) (a.k.a. JINPAI TECHNOLOGY (HONG KONG) CO., LTD.; a.k.a. KING PAI TECHNOLOGY CO., LTD.), Rm 13, 4/F Flourish Industrial Building, 33 Sheung Yee Road, Bay Kowloon, Hong Kong, China; Organization Established Date 11 Aug 2008; Registration Number 1263702 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

29. SEQUOIA TREUHAND TRUST REG, Poststrasse 2, Ruggell, LI–06 9491, Liechtenstein; website *https://sequoia.li;* Organization Established Date 2007; Legal Entity Number 5299007BJ0JWBN3WVQ35; Registration Number FL–0002.222.366–2 (Liechtenstein) [RUSSIA–EO14024] (Linked To: TIMCHENKO, Gennady Nikolayevich).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Gennadiy Nikolayevich Timchenko, a person whose property and interests in property are blocked pursuant to E.O. 14024.

B. On April 14, 2023, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continues to be blocked under the relevant sanctions authority listed below.

1. SEQUOIA TREUHAND TRUST REG, Postrasse 2, Ruggell, LI–06 9491, Liechtenstein; website *https://sequoia.li;* Organization Established Date 2007; Legal Entity Number 5299007BJ0JWBN3WVQ35; Registration Number FL–0002.222.366–2 (Liechtenstein) [RUSSIA–EO14024] (Linked To: TIMCHENKO, Gennady Nikolayevich).

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SEQUOIA TREUHAND TRUST REG, Poststrasse 2, Ruggell, LI–06 9491, Liechtenstein; website *https://sequoia.li;* Organization Established Date 2007; Legal Entity Number 5299007BJ0JWBN3WVQ35; Registration Number FL–0002.222.366–2 (Liechtenstein) [RUSSIA–EO14024] (Linked To: TIMCHENKO, Gennady Nikolayevich).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Gennadiy Nikolayevich Timchenko, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: April 14, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–10698 Filed 5–18–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning tax information authorization and IRS disclosure authorization for victims of identity theft.

DATES: Written comments should be received on or before July 18, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference the information collection's ''OMB number 1545–1165'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Sara Covington, at (202) 317–5744 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Tax Information Authorization and IRS Disclosure Authorization for Victims of Identity Theft.

OMB Number: 1545–1165.

Form Number: Form 8821 and Form 8821–A.

Abstract: Form 8821 is used to appoint someone to receive or inspect certain tax information. The information on the form is used to identify appointees and to ensure that confidential tax information is not disclosed to unauthorized persons. Form 8821–A is an authorization signed by a taxpayer for the IRS to disclose returns and return information to state or local law enforcement in the event of a possible identity theft.

Current Actions: There are no changes being made to the forms at this time. However, the agency has updated the respondent estimates based on the most recent filing data.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not for profit institutions, and farms.

Form 8821

Estimated Number of Respondents: 3,393,083.

Estimated Time per Respondent: 1 hours, 3 minutes.

Form 8821–A

Estimated Number of Respondents: 182.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,562,764 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2023.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2023–10730 Filed 5–18–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–E

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). The IRS is soliciting comments concerning Form 1098–E, Student Loan Interest Statement.

DATES: Written comments should be received on or before July 18, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference the information collection's ''OMB number 1545–1576'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–

5744, or through the internet, at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Student Loan Interest Statement.

OMB Number: 1545–1576.

Form Number: 1098–E.

Abstract: Section 6050S(b)(2) of the Internal Revenue Code requires persons (financial institutions, governmental units, etc.) to report $600 or more of interest paid on student loans to the IRS and the students. Form 1098–E is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and State, local or Tribal governments.

Estimated Number of Respondents: 10,093,249.

Estimated Time per Respondent: 7 min.

Estimated Total Annual Burden Hours: 1,211,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2023.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2023–10706 Filed 5–18–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4422 and Form 15056

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995(PRA). The IRS is soliciting comments concerning Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien and Form 15056, Escrow Agreement for Estates.

DATES: Written comments should be received on or before July 18, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference the information collection's ''OMB number 1545–0328'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–5744, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Form 4422—Application for Certificate Discharging Property Subject to Estate Tax Lien and Form 15056—Escrow Agreement for Estates.

OMB Number: 1545–0328.

Form Numbers: 4422 and 15056.

Abstract: Form 4422 is completed by either an executor, administrator, or other interested party for requesting release of any or all property of an estate from the Estate Tax Lien. Form 15056 is a contractual agreement between three parties (the IRS, Taxpayer, and Escrow agent) to hold funds from property sales subject to the federal estate tax lien. The only information it requires is a quarterly statement reflecting the balance in the escrow account as proof that the funds are being held in accordance with the agreement.

Current Actions: There are no changes being made to the forms at this time. However, the estimated number of responses are decreased due to the most current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, State, local, or Tribal Gov't.

Form 4422:

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

Form 15056:

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2023.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2023–10705 Filed 5–18–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulation Agency Protests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments should be received on or before June 20, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Regulation Agency Protests.

OMB Control Number: 1505–0107.

Type of Review: Extension without change of a currently approved collection.

Description: The Federal Acquisition Regulation (FAR); 48 CFR chapter 1 provides general procedures on handling protests submitted by contractors to Federal agencies. Treasury regulations provide detailed guidance for contractors doing business with acquisition offices within the U.S. Department of the Treasury to implement the FAR. FAR part 33.103, Protests to the agency prescribes the policies and procedures for filing protests to the agency. Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 5.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 10.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–10734 Filed 5–18–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before June 20, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202)–622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

1. Title: Special Bond of Indemnity By Purchaser of United States Savings Bonds/Notes Involved in a Chain Letter Scheme.

OMB Number: 1530–0030.

Form Number: FS Form 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 240.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 32.

2. Title: Agreement and Request for Disposition of a Decedent's Treasury Securities.

OMB Number: 1530–0046.

Form Number: FS Form 5394.

Abstract: The information is necessary for the disposition of Treasury securities and/or payments to the entitled person(s) when the decedent's estate was formally administered through the court and has been closed, or the estate is being settled in accordance with State statute without the necessity of the court appointing a legal representative.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 18,500.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 9,250.

3. Title: Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1530–0051.

Abstract: Chapter 31 of title 31 of the United States Code authorizes the Secretary of the Treasury to prescribe the terms and conditions, including the form, of United States Treasury bonds, notes and bills. The information collected is essential to establish and maintain Tax and Loss Bond accounts (31 CFR part 343). This regulation governs issues, reissues and redemptions of Tax and Loss bonds. The information requested will be used to issue a Statement of Account to the entity, establish issue and maturity dates for the bonds, and provide electronic payment routing instructions for the proceeds.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 13.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–10753 Filed 5–18–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before June 20, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202)–622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Marks on Equipment and Structures (TTB REC 5130.3), and Marks and Labels on Containers of Beer (TTB REC 5130.4).

OMB Control Number: 1513–0086.

TTB Recordkeeping Numbers: TTB REC 5130.3 and TTB REC 5130.4.

Abstract: Under the authority of chapter 51 of the IRC, the TTB regulations in 27 CFR part 25, Beer, require brewers to place certain marks, signs, and measuring devices on their equipment and structures, and to place certain brands, labels, and marks on bulk and consumer containers of beer and other brewery products. The required information identifies the use, capacity, and contents of brewery equipment and structures, as well as taxable brewery products and the responsible taxpayer. As such, the required information is necessary to protect the revenue and ensure effective administration of the IRC's provisions regarding brewery operations and products. The required information also identifies the contents of bulk and consumer containers of beer and other brewery products. For the purposes of inventory control, cost accounting, equipment utilization, and product identification, TTB believes that brewers would, in the normal course of business, place the information required under the regulations on their equipment and structures and on their bulk and consumers containers of beer and other brewery products, regardless of any TTB requirement to do so.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the estimated number of annual respondents and responses associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 13,720.

Average Responses per Respondent: 1 (one).

Number of Responses: 13,720.

Average Per-response and Total Burden: As this information collection consists of usual and customary marks and labels placed by brewers during the normal course of business, under 5 CFR 1320.3(b)(2), there is no additional burden on respondents associated with this information collection.

2. Title: CBMA Imports Refund Program—Foreign Producer Registration and Assignment System; CBMA Importer Refund Claims System.

OMB Control Number: 1513–0142

Abstract: The IRC at 26 U.S.C. 5001, 5041, and 5051 imposes Federal excise tax on, respectively, distilled spirits, wine, and beer manufactured in or imported into the United States. Under the Craft Beverage Modernization Act (CBMA), certain limited quantities of those products are eligible for lower excise tax rates (see sections 13801–13808 of the Tax Cuts and Jobs Act of 2017, Pub. L. 115–97). Recent amendments to the IRC and CBMA made by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Tax Relief Act; Division EE of Pub. L. 116–260) transferred responsibility for administering those CBMA reduced excise tax rate provisions from Customs and Border Protection (CBP) to the Treasury Department, effective January 1, 2023. In addition, rather than receiving CBMA tax benefits at the time of an import's entry, for entries after that date, U.S. importers are required to pay the full excise tax rate to CBP and then subsequently submit refund claims to Treasury to receive their assigned CBMA tax benefits. Under the IRC at 26 U.S.C. 5001(c), 5041(c), and 5051(a), a U.S. importer will only be eligible for CBMA tax benefits if a foreign producer has elected to assign, and the importer has elected to receive, such benefits in accordance with regulations and procedures issued by the Secretary. Finally, under the new provision at 26 U.S.C. 6038E, foreign producers electing to make such assignments are required to provide the information the Secretary requires by regulation, including information about controlled group structures of such producers.

Under those amended IRC authorities, and authorities delegated to TTB by the Secretary, TTB issued temporary regulations in 27 CFR part 27 establishing procedures for alcohol industry members to take advantage of the CBMA tax benefits (see T.D. TTB–186, 09/23/2022, 87 FR 58021). In particular, the new regulations establish the procedures by which (1) Foreign producers may assign CBMA tax benefits to U.S. importers, and (2) U.S. importers may elect to receive those assignments and submit their CBMA tax benefit refund claims to TTB. This information collection is required to ensure that the IRC provisions regarding CBMA tax benefit refund claims for U.S. alcohol importers are appropriately applied, which is necessary to protect the revenue.

Current Actions: There are no program changes or adjustments associated with this information collection, which was recently approved by the Office of Management and Budget on an emergency basis, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 26,000.

Average Responses per Respondent: 1.8077.

Number of Responses: 47,000.

Average Per-response Burden: 2 hours.

Total Burden: 94,000 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–10740 Filed 5–18–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the VA is modifying the system of records entitled, ''Telephone Service for Clinical Care Records-VA'' (113VA112). This system is used to provide clinical and administrative support to patient care as well as provide medical and administrative documentation of the care and/or services provided in Call Centers. This system is also used for improving Call Center staff's ability to provide telephone care services to Veterans and the quality of the service by having immediate access to records of calls made previously by the Veteran.

DATES: Comments on this amended system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Telephone Service for Clinical Care Records-VA'' (113VA112). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, VHA Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is modifying the system of records by revising the System Number; System Location; System Manager; Purpose of the System; Categories of Individuals Covered by the System; Records Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; and Policies and Practices for Retention and Disposal of Records. VA is republishing the system notice in its entirety.

The System Number will be changed from 113VA112 to 113VA10 to reflect the current VHA organizational routing symbol.

The System Location is being modified to remove ''records located at each Call Center.'' This section will include the Corporate Data Warehouse, Austin Information Technology Center (AITC) in Austin, Texas. Also, Employee Education Systems is being replaced with Institute for Learning, Education and Development (ILEAD).

The System Manager is being updated to replace, ''with, Assistant Under Secretary for Health'' for ''Integrated Veteran Care.''

The Purpose of the System is being modified to remove ''Utilization Review Accreditation Commission (URAC) for the accreditation of a Call Center or facility.'' This section will include another accreditation agency.

Categories of Individuals Covered by the System is being modified to include non-enrolled patients.

Categories of Records is being updated to replace 79VA19 with 79VA10, and 24VA19 is replaced with 24VA10A7.

The language in Routine Use #7 is being updated to include other licensed health care practitioners.

The following routine use is added and will be routine use #17, ''Data Breach Response and Remediation, For Another Agency: To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in; (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government or national security, resulting from a suspected or confirmed breach.''

Policies and Practices for Storage of Records is being modified to remove ''automated storage media, such as magnetic tape, disc or laser optical media.'' This section will now include ''VistA and Computerized Patient Record System.''

Policies and Practices for Retention and Disposal of Records is being modified to include Item Numbers 1930.2 and 1930.4.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on April 7, 2023 for publication.

Dated: May 16, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Telephone Service for Clinical Care Records-VA'' (113VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are located at each of the Veterans Integrated Service Network (VISN) Offices, which are operated at the Department of Veteran Affairs (VA) health care facilities or at contractor locations; and the Corporate Data Warehouse, Austin Information Technology Center (AITC) in Austin, Texas. In addition, information from clinical symptom calls is maintained in the patient's medical record at VA health care facilities; VISNs; and at the VA Institute for Learning, Education and Development (ILEAD), 810 Vermont Avenue NW, Washington, DC 20420. VA facility addresses are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances.

SYSTEM MANAGER(S):

Official responsible for policies and procedures for Clinical Contact Centers: Assistant Under Secretary for Health for Integrated Veteran Care, VA, 810 Vermont Avenue NW, (16A), Washington, DC 20420. Telephone number (202) 461–4242 (this is not a toll-free number). Officials maintaining the system: Network and/or facility director at the Network and/or facility where the individuals are associated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501.

PURPOSE(S) OF THE SYSTEM:

The purpose of these records is to provide clinical and administrative support to patient care as well as provide medical and administrative documentation of the care and/or services provided in Call Centers. The records may also be used to improve Call Center staff's ability to provide telephone care services to Veterans and the quality of the service by having immediate access to records of calls made previously by the Veteran. Records may likewise be used for purposes of notifying VA providers of the patient's condition and status, the criteria used to judge the status of the patient and/or the information given to the external provider on follow-up steps that they must take to receive authorization for the care. Records may also be used to assess and improve the quality of the services provided through telephone care services and to produce various management and patient follow-up reports. Records may additionally be used to respond to patients, families and other inquiries, including at times non-VA clinicians and The Joint Commission (TJC) or another accreditation agency. Records, when stripped of individual patient identifiers, may also be used to conduct health care related studies, statistical analysis and resource allocation. The clinical information is integrated into the patient's overall health record, into quality improvement plans and activities of the facility, such as utilization review and risk management. Records are also used to improve Call Center services, such as patient education, the improved integration of clinical care, the provision of telephone care services and communication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual enrolled and non-enrolled patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Clinical care such as clinical symptoms, questions asked about symptoms, answers received, clinical protocol used, and advice provided. It might include doctors' orders for patient care such as nursing care; current medications; scheduling and delivery; consultations, radiology, laboratory and other diagnostic and therapeutic examinations and results; clinical protocol and other reference materials; education provided, including title of education material and reports of contact with individuals or groups. It includes information related to the patient's or family member's understanding of the advice given and their plan of action and, sometimes, the effectiveness of those actions.

2. Record of all calls made to the Call Center, including caller questions about medications, their uses and side effects, requests for renewals of prescriptions, appointment changes, benefits information and the actions taken related to each call, including the notification of providers and other staffs about the call.

3. Contact information from private sector medical facilities or clinicians contacting the VA about issues such as enrolled Veterans' visits to an emergency department or admissions to a community medical center.

RECORD SOURCE CATEGORIES:

Record sources include enrolled patients; patients' families and friends; private medical facilities and their clinical and administrative staff; health care professionals; Patient Medical Records-VA (24VA10A7); Veterans Health Information Systems and Technology Architecture (VistA) (79VA10); VA health care providers; and Call Center nurses and administrative staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in both 38 U.S.C. 7332 and 45 CFR parts 160, 161, and 164.

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *To the Department of Justice (DoJ), Litigation, Administrative Proceeding:* To DoJ, or in a proceeding before a court, adjudicative body or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings and VA determines that the use of such records is relevant and necessary to the proceedings.

3. *State Licensing Boards (SLBs), for Licensing:* To a Federal agency, a State or local government licensing board, the Federation of State Medical Boards or a similar non-governmental entity that maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty. This information can be used to inform such non-governmental entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

4. *TJC, for Accreditation:* To survey teams of TJC, College of American Pathologists, American Association of Blood Banks and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, as relevant and necessary for the purpose of program review or the seeking of accreditation or certification.

5. *Former Employee, Contractor or Representative, for SLB Reporting:* To a former VA employee or contractor, as well as the authorized representative of

a current or former employee or contractor of VA, in connection with or in consideration of reporting that the individual's professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients, to a Federal agency, a State or local government licensing board or the Federation of State Medical Boards or a similar nongovernmental entity that maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty.

6. *National Practitioner Data Bank (NPDB), for Hiring or Privileging:* To the NPDB at the time of hiring or clinical privileging/re-privileging of health care practitioners, and at other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention or termination of the applicant or employee.

7. *NPDB, SLB, for Medical Malpractice:* To the NPDB or an SLB in the State in which a practitioner is licensed, in which the VA facility is located or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning; (1) Any payment for the benefit of a physician, dentist or other licensed health care practitioner that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision that relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician, dentist, or other licensed health care practitioner for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician, dentist, or other licensed health care practitioner either while under investigation by the health care entity relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

8. *Medical School, for Evaluating Students:* To a medical or nursing school, other health care related training institution or other facility with which VA has an affiliation, sharing agreement, contract or similar arrangement, when the student or provider is enrolled at or employed by the school or training institution or other facility, and the information is needed for personnel management, rating or evaluation purposes, provided that VA discloses from a named patient's VA medical record that relates to the performance of a health care student or provider.

9. *Contractors:* To contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

10. *Federal Agencies, for Employment:* To a Federal agency, except the United States Postal Service, or to the District of Columbia government, in response to its request, in connection with that agency's decision on the hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by that agency.

11. *Family or Partner, for Notification of Patient Status:* To family members or the persons with whom the patient has a meaningful relationship, by appropriate VA personnel, to the extent necessary, on a need-to-know basis, and consistent with good medical-ethical practices.

12. *Law Enforcement:* To a Federal, State, local, Territorial, Tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

13. *Non-VA physician or medical facility staff:* To a non-VA physician or medical facility staff caring for a Veteran for the purpose of providing relevant clinical information in an urgent or emergent situation.

14. *National Archives and Records Administration (NARA):* To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

15. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

16. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities and persons when; (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government or national security; and (3) the disclosure made to such agencies, entities or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

17. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in; (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in the electronic health record, VistA and Computerized Patient Record System.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, Social Security Number or other assigned identifier of the enrolled Veteran who is calling or about whom the call is being made.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VHA Records Control Schedule 10–1, Item Numbers 1930.2 and 1930.4.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center areas are locked after normal duty hours or when the Call Center is closed, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Information in VistA may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the system recognized authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA is afforded similar storage and access protections as the data that is maintained in the original files access to information stored on automated storage media at other VA and contract locations is controlled by individually unique passwords/codes.

3. Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the health record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

67 FR 63497 (October 11, 2002); 74 FR 21742 (May 8, 2009).

[FR Doc. 2023–10732 Filed 5–18–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Office of Mental Health and Suicide Prevention (OMHSP).

ACTION: Notice of a new system of records.

SUMMARY: The Privacy Act of 1974 requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, ''PAWS Portal-VA'' (212VA10). ''PAWS'' is an acronym for ''Puppies Assisting Wounded Servicemembers''.

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''PAWS Portal-VA'' (212VA10). Comments received will be available at *www.Regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *stephania.griffin@va.gov,* telephone number 704–245–2492 (Note: This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

Information in this system of records is used to establish and maintain records of individuals participating in the Puppies Assisting Wounded Servicemembers for Veterans (PAWS) program. The Puppies Assisting Wounded Servicemembers for Veterans Therapy Act (hereinafter referred to as ''the Act'') was signed into law by the President on August 25, 2021 (Pub. L. 117–37, 125, Stat. 329). Section (2) of the Act requires VA to conduct a pilot program to provide canine training to eligible Veterans. Section 2(h) establishes VA's reporting requirements associated with the five-year pilot. Information is maintained in the PAWS Portal. The Portal will be the administrative repository of information required to support the program with ongoing assessment and monitoring. Designated VA staff will enter the contact and assessment information into the portal for each Veteran. This information will be available to service dog organizations (SDOs) to track attendance. Additionally, de-identified data generated from the PAWS Portal will be used in reports to OMHSP, VA Central Office and Congress on the effectiveness of the program. The PAWS Portal will collect Veteran patient demographic data to evaluate the success of the program.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information maintained in the system.

1. *Congress:* VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* VA may disclose information to appropriate agencies,

entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records,· (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* VA may disclose information to another Federal agency or Federal entity, when VA determines that the information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* VA may disclose information to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *DoJ for Litigation or Administrative Proceeding:* VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *EEOC:* VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *FLRA:* VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* VA may disclose information to the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* VA may disclose information to the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *Health Care Providers, for Referral by VA:* VA may disclose information to: (1) a Federal agency or health care provider when VA refers a patient for medical and other health services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (2) a Federal agency or to health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

13. *Health Care Providers, for Referral to VA:* VA may disclose information to a non-VA health care provider when that health care provider has referred the individual to VA for medical or other health services.

14. *Covered Entities, for their Health Care Operations:* VA may disclose information to a covered entity for their health care operations, provided that the entity either has or had a relationship with the individual, and the disclosure is for the purpose of:

(a) Conducting quality assessment and improvement activities; patient safety activities as defined in 42 CFR 3.20; population-based activities relating to improving health or reducing health care costs, protocol development, case management, and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance, health plan performance; conducting training programs for health care practitioners, trainees, and students; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; or

(c) Health care fraud and abuse detection or compliance.

15. *Federal Agencies, for Research:* VA may disclose information to a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that Federal agency upon the written request of that agency.

16. *Researchers, for Research:* VA may disclose information to epidemiological and other research facilities approved by the Under Secretary for Health for research purposes determined to be necessary and proper, provided that the names and addresses of Veterans and their dependents will not be disclosed unless those names and addresses are first provided to VA by the facilities making the request.

17. *OMB:* VA may disclose information to the Office of Management and Budget (OMB) for the performance of its statutory

responsibilities for evaluating Federal programs.

18. *Nonprofits, for Release of Name and/or Address (RONA):* VA may disclose information to a nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38, provided that the disclosure is limited the names and addresses of present or former members of the armed services or their beneficiaries, the records will not be used for any purpose other than that stated in the request, and the organization is aware of the penalty provision of 38 U.S.C. 5701(f).

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on April 7, 2023 for publication.

Dated: May 16, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER: ''PAWS PORTAL–VA'' (212VA10)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

These records are the responsibility of the Office of Mental Health and Suicide Prevention (OMHSP), Veterans Health Administration, Department of Veterans Affairs. The OMHSP is located at 810 Vermont Avenue NW, Washington, DC 20420. Records are maintained in the Microsoft Government Cloud at the Boydton Data Center in Boydton, Virginia.

SYSTEM MANAGER(S):

Stacey Pollack, Ph.D., National Mental Health Director, Program Policy Implementation, Office of Mental Health and Suicide Prevention, 810 Vermont Avenue NW, Washington, DC 20420, telephone number 202–738–2932 (Note: This is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Puppies Assisting Wounded Servicemembers for Veterans Therapy Act (hereinafter referred to as ''the Act'') was signed into law by the President on August 25, 2021 (Pub. L. 117–37, 125, Stat. 329).

PURPOSE(S) OF THE SYSTEM:

The ''PAWS Portal–VA'' will be used to store information that is shared between the VA medical centers (VAMCs) participating as the pilot sites, and the service dog organizations (SDOs) providing the training. The Portal will be used to track Veteran attendance in the program as well as the management and effectiveness of the program. The Portal may also be used to determine the impact on Veteran care and capture information on Veteran satisfaction with the program. Additionally, de-identified data generated from the PAWS Portal will be used in reports to OMHSP, VA Central Office and Congress on the effectiveness of the program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in the system are on Veterans who have received VA health care benefits under 38 U.S.C, Chapter 17, and SDO trainers participating in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information entered into the PAWS Portal includes demographic information, such as name, address, phone number, email address, and the last four of the Veteran's Social Security number. In addition, information regarding the Veteran's attendance in the program is collected, such as date of trainings and location of trainings. SDO trainer names and their email addresses are collected in this system. Eligibility-related information may also be collected, such as referrals, VA staff evaluations, correspondence, and documentation of phone calls, and any information regarding a safety issue around Veterans, SDO trainers, or dogs.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veteran participants in the pilot program, the PAWS Portal VA staff, and by the SDO and their trainers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific disclosure authority in both 38 U.S.C. 7332 and 45 CFR parts 160 and 164.

1. *Congress:* VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* VA may disclose information to another Federal agency or Federal entity, when VA determines that the information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* VA may disclose information to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *DoJ for Litigation or Administrative Proceeding:* VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;
(b) Any VA employee in his or her official capacity;
(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or
(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *EEOC:* VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *FLRA:* VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* VA may disclose information to the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* VA may disclose information to the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *Health Care Providers, for Referral by VA:* VA may disclose information to: (1) a Federal agency or health care provider when VA refers a patient for medical and other health services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (2) a Federal agency or to health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

13. *Health Care Providers, for Referral to VA:* VA may disclose information to a non-VA health care provider when that health care provider has referred the individual to VA for medical or other health services.

14. *Covered Entities, for their Health Care Operations:* VA may disclose information to a covered entity for their health care operations, provided that the entity either has or had a relationship with the individual, and the disclosure is for the purpose of:
(a) Conducting quality assessment and improvement activities; patient safety activities as defined in 42 CFR 3.20; population-based activities relating to improving health or reducing health care costs, protocol development, case management, and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
(b) Reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance, health plan performance; conducting training programs for health care practitioners, trainees, and students; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; or
(c) Health care fraud and abuse detection or compliance.

15. *Federal Agencies, for Research:* VA may disclose information to a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that Federal agency upon the written request of that agency.

16. *Researchers, for Research:* VA may disclose information to epidemiological and other research facilities approved by the Under Secretary for Health for research purposes determined to be necessary and proper, provided that the names and addresses of Veterans and their dependents will not be disclosed unless those names and addresses are first provided to VA by the facilities making the request.

17. *OMB:* VA may disclose information to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

18. *Nonprofits, for Release of Name and/or Address (RONA):* VA may disclose information to a nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38, provided that the disclosure is limited the names and addresses of present or former members of the armed services or their beneficiaries, the records will not be used for any purpose other than that stated in the request, and the organization is aware of the penalty provision of 38 U.S.C. 5701(f).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the Veteran's name, phone number, email address, the last four of their Social Security number, program attendance records or by any combination of these identifiers. Records are also retrieved by the name and email address of the SDO trainers participating in the program.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained and destroyed in accordance with the VA Records Control Schedule, RCS 10–1, 6400.2: Temporary, records are to be filed within the Veteran's electronic health records (DAA–0015–2015–0005–0003) and 6400.3: Temporary, cutoff originals and copies at the end of calendar year. Destroy 7 years after cutoff (DAA–0015–2015–0005–0004).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. On an annual basis, employees are required to sign a computer access agreement acknowledging their understanding of confidentiality requirements. In addition, all employees receive annual privacy awareness and information security training. 2. Access to electronic records is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security

measures. 3. Strict control measures are enforced to ensure that access to and disclosure from all records are limited to VA and the SDO employees whose official duties warrant access to those files. 4. Access to the PAWS Portal is restricted and requires approval prior to access. Restricted access will be provided to enable workflow management to administer, monitor and track services delivered via the PAWS Portal.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of the PAWS Portal records may write or visit the VA health care facility where the PAWS program was attended or the VA health care facility that referred the Veteran to participate in the PAWS program offsite.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to review the contents of such record, should submit a written request, or apply in person to the VA health care facility where the PAWS program was attended or to the VA health care facility that referred the Veteran to participate in the PAWS program offsite. All inquiries must reasonably describe the portion of the medical record involved and the place and approximate date that medical care was provided. Inquiries should include the patient's full name, Social Security number, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2023–10726 Filed 5–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying the system of records entitled, ''National Prosthetic Patient Database (NPPD)–VA'' (33VA113) as set forth in the **Federal Register**. This system is used to furnish administrative and clinical statistical procurement and prescription information, including total cost and summary of activity, including equipment usage, data to VA and other health care providers, both Federal and non-Federal, to aid in furthering the improvement of health care, research, and education.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''National Prosthetic Patient Database (NPPD)–VA'' (33VA113). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *stephania.griffin@va.gov;* telephone (704) 245–2492 (Note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the System Name; System Number; System Location, System Manager, Records Source Categories, Routine Uses of Records Maintained in the System, Policies and Practices for Retention and Disposal of Records, and Administrative, Technical and Physical Safeguards. VA is republishing the system notice in its entirety.

The System Name is being updated from ''National Prosthetic Patient Database (NPPD)–VA'' to ''National Prosthetic Patient Records–VA''.

The System Number is being updated from 33VA113 to 33VA10 to reflect the current VHA organizational routing symbol.

The System Location and the Administrative, Technical and Physical Safeguards sections are being updated to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC).

The System Manager is updated to replace Chief Consultant, Prosthetic and Sensory Aids Service Strategic Healthcare Group (113), with Executive Director, Prosthetic and Sensory Aids Service.

The Records Source Categories is being updated to replace 79VA19 with 79VA10, and 24VA19 is replaced with 24VA10A7.

The language in Routine Use #6 is being updated. It previously stated that disclosure of the records to the Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records and that VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

Routine use #11 is being added to state, ''To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.''

Policies and Practices for Retention and Disposal of Records is being updated to remove ''Regardless of the record medium, records will be maintained and disposed of in accordance with the record disposition authority approved by the Archivist of the United States under National Archives Job No. N1–15–01–4.'' This section is updated to state that NPPD records will be maintained and disposed of in accordance with Records Control Schedule (RCS) 10–1, 7700.4, temporary disposition; Cutoff at the end of fiscal year in which prosthetic procedure was concluded. Delete 3 years after cutoff. (N1–15–01–4, 11/17/03, item 1)

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on April 5, 2023 for publication.

Dated: May 16, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''National Prosthetic Patient Records–VA'' (33VA10)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are located within Department of Veterans Affairs (VA) medical center databases. Extracts are maintained at the Austin Information Technology Center (AITC), Austin, Texas, and Hines Information Service Center, Hines, Illinois. VA health care facility address locations are listed in VA Appendix I of the Biennial Privacy Act Issuances publication.

SYSTEM MANAGER(S):

Official responsible for policies and procedures: Penny Nechanicky, Executive Director, Prosthetic and Sensory Aids Service, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 202–461–4239 (this is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 527.

PURPOSE(S) OF THE SYSTEM:

The purpose of these records is to furnish administrative and clinical statistical procurement and prescription information, including total cost and summary of activity, including equipment usage, data to VA and other health care providers, both Federal and non-Federal, to aid in furthering the improvement of health care, research, and education.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning contracted fabricators of prosthetic and orthotic appliances; vendors and manufacturers of durable medical equipment and sensory-neural aids; medical supply companies; VA beneficiaries; and VA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to: VA field facility ordering the orthotic device; Patient Identification Number; Health Care Financing Administration Common Procedure Coding System (HCPCS); item purchased/issued to patient; cost; quantity; type of issue (initial/replace/repair/spare); patient eligibility category (service-connected, prisoner of war, aid and attendance); responsible VA procurement officer or representative; order creation date; order close/delivery date; calculated processing days; transaction/purchase order number; type of form used to purchase item (VAF 2421, PC2421, VAF 2529, VAF 2914, etc.); and vendor/contractor name. All other patient information, *i.e.,* name, address, telephone number, can be retrieved by prosthetic program officials in VA Central Office by using the unique Patient Identification Number assigned to the patient in NPPD.

RECORD SOURCE CATEGORIES:

Record sources include Veterans Health Information System and Technology Architecture (VistA)–VA (79VA10), Patient Medical Records–VA (24VA10A7), and Veterans' records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in both 38 U.S.C. 7332 and CFR parts 160 and 164 permitting disclosure.

1. *Law Enforcement:* To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

2. VA may disclose information to furnish administrative and clinical statistical procurement and prescription information, including total cost and summary of activity, including equipment usage, data to VA and other health care providers, both Federal and non-Federal, to aid in furthering the improvement of health care, research and education.

3. VA may disclose information to provide statistical and other information in response to legitimate and reasonable requests as approved by appropriate VA authorities.

4. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

5. *NARA:* To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

6. *DOJ, Litigation, Administrative Proceeding:* To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

7. *Contractors:* To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

8. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

9. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. *Federal Agencies, Courts, Litigants, for Litigation or Administrative Proceedings:* To another Federal agency, court, or party in litigation before a court or in an administrative proceeding conducted by a Federal agency, when the government is a party to the judicial or administrative proceeding.

11. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on compact and magnetic disk.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved and indexed by Patient Identification Number for VA prosthetic personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

NPPD records will be maintained and disposed of in accordance with Records Control Schedule (RCS) 10–1, 7700.4, temporary disposition; Cutoff at the end of fiscal year in which prosthetic procedure was concluded. Delete 3 years after cutoff. (N1–15–01–4, 11/17/03, item 1)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service. Strict control measures are enforced to ensure that disclosure is limited to a ''need to know'' basis. Physical access to the AITC is generally restricted to AITC staff, Central Office employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the VistA may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by a series of individually-unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Access to information stored on automated storage media at other VA locations is controlled by individually-unique passwords/codes.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of a VA prosthetic-related record in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above or inquire in person at the VA health care facility they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

40 FR 38095 (August 26, 1975), 66 FR 20033 (April 18, 2001) 70 FR 3980 (January 27, 2005).

[FR Doc. 2023–10729 Filed 5–18–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Friday,

No. 97 May 19, 2023

Part II

Department of Education

34 CFR Parts 600 and 668

Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB); Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

[Docket ID ED–2023–OPE–0089]

RIN 1840–AD51, 1840–AD57, 1840–AD64, 1840–AD65, and 1840–AD80

Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary is proposing new regulations to promote transparency, competence, stability, and effective outcomes for students in the provision of postsecondary education. Using the terminology of past regulatory proposals, these regulations seek to make improvements in the areas of gainful employment (GE); financial value transparency; financial responsibility; administrative capability; certification procedures; and Ability to Benefit (ATB).

DATES: We must receive your comments on or before June 20, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* Information on using *Regulations.gov,* including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.'' If you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment only once. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department's policy is to generally make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would facilitate readers identifying that individual. The Department reserves the right to redact at any time any information in comments that identifies other individuals, includes information that would facilitate readers identifying other individuals, or includes threats of harm to another person.

FOR FURTHER INFORMATION CONTACT: For financial value transparency and GE: Joe Massman. Telephone: (202) 453–7771. Email: *Joe.Massman@ed.gov*. For financial responsibility: Kevin Campbell. Telephone: (214) 661–9488. Email: *Kevin.Campbell@ed.gov*. For administrative capability: Andrea Drew. Telephone: (202) 987–1309. Email: *Andrea.Drew@ed.gov*. For certification procedures: Vanessa Gomez. Telephone: (202) 453–6708. Email: *Vanessa.Gomez@ed.gov*. For ATB: Aaron Washington. Telephone: (202) 987–0911. Email: *Aaron.Washington@ed.gov*. The mailing address for the contacts above is U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Directed Questions: The Department invites you to submit comments on all aspects of the proposed regulations, as well as the Regulatory Impact Analysis. The Department is particularly interested in comments on questions posed throughout the Preamble, which are collected here for the convenience of commenters, with a reference to the section in which they appear. The Department is also interested in comments on questions posed in the Regulatory Impact Analysis.

Calculating Earnings Premium Measure (§ 668.404)

We recognize that it may be more challenging for some programs serving students in economically disadvantaged locales to demonstrate that graduates surpass the earnings threshold when the earnings threshold reflects the median statewide earnings, including locales with higher earnings. We invite public comments concerning the possible use of an established list, such as list of persistent poverty counties compiled by the Economic Development Administration, to identify such locales, along with comments on what specific adjustments, if any, the Department should make to the earnings threshold to accommodate in a fair and data-informed manner programs serving those populations.

Student Disclosure Acknowledgments (§ 668.407)

The Department is aware that in some cases, students may transfer from one program to another or may not immediately declare a major upon enrolling in an eligible non-GE program. We welcome public comments about how to best address these situations with respect to acknowledgment requirements. The Department also understands that many students seeking to enroll in non-GE programs may place high importance on improving their earnings and would benefit if the regulations provided for acknowledgements when a non-GE program is low-earning. We further welcome public comments on whether the acknowledgement requirements should apply to all programs, or to GE programs and some subset of non-GE programs, that are low-earning.

The Department is also aware that some communities face unequal access to postsecondary and career opportunities, due in part to the lasting impact of historical legal prohibitions on educational enrollment and employment. Moreover, institutions established to serve these communities, as reflected by their designation under law, have often had lower levels of government investment. The Department welcomes comments on how we might consider these factors, in accord with our legal obligations and authority, as we seek to ensure that all student loan borrowers can make informed decisions and afford to repay their loans.

Financial Responsibility—Reporting Requirements (§ 668.171)(f)(i)(iii)

We specifically invite comments as to whether an investigation as described in § 668.171(f)(1)(iii) warrants inclusion in the final regulations as either a mandatory or discretionary financial trigger. We also invite comment as to what actions associated with the investigation would have to occur to initiate the financial trigger.

Provisional Certification (§ 668.13(c))

Proposed § 668.13(c)(2)(ii) requires reassessment of provisionally certified institutions that have significant consumer protection concerns (*i.e.,* those arising from claims under consumer protection laws) by the end of their second year of receiving certification. We invite comment about whether to maintain the proposed two-year limit or extend recertification to no more than three years for provisionally certified schools with major consumer protection issues.

Approved State Process (§ 668.156(f))

As agreed by Committee consensus, we propose a success rate calculation under proposed § 668.156(f). To further inform the final regulations, we specifically request comments on the proposed 85 percent threshold, the comparison groups in the calculation, the components of the calculation, and whether the success rate itself is an appropriate outcome indicator for the State process.

Executive Summary

Purpose of This Regulatory Action

The financial assistance students receive under the title IV, HEA programs for postsecondary education and training represent a significant annual expenditure by the Federal government. When used effectively, Federal aid for postsecondary education and training is a powerful tool for promoting social and economic mobility. However, many programs fail to effectively enhance students' skills or increase their earnings, leaving them no better off than if they had never pursued a postsecondary credential and with debt they cannot afford.

The Department is also aware of a significant number of instances where institutions shut down with no warning and is concerned about the impact of such events for students. For instance, one recent study shows that, of closures that took place over a 16-year period, 70 percent of the students at such institutions (100,000 individuals) received insufficient warning that the closures were coming.[1] These closures often come at a significant cost to taxpayers. Students who were enrolled at or close to the time of closure and did not graduate from the shuttered institution may receive a discharge of their Federal student loans. The cost of such discharges is rarely fully reimbursed because once the institution closes there are often few assets to use for repaying Federal liabilities. For example, the Department recouped less than 2 percent of the $550 million in closed school discharges awarded between January 2, 2014, to June 30, 2021, to students who attended private for-profit colleges.[2] While these closures may have occurred without notice for the students, they were often preceded by months if not years of warning signs. Unfortunately, existing regulations do not provide the Department the necessary authority to rely on those indicators of risk to take action and unfortunately, despite observing these signs, the Department has lacked authority under existing regulations to take action based on those indicators of risk in order to secure financial protection before the institution runs out of money and closes.

The Department's inability to act also has implications for students. Students whose colleges close tend to have high default rates and are highly unlikely to continue their educational journeys elsewhere. Those who enrolled well before the point of closure may have been misled into taking on loans through admissions and recruitment efforts based on misrepresentations about the ability of attendees to obtain employment or transfer credit. Acting more swiftly in the future to obtain financial protection would help either deter risky institutional behavior or ensure the Department has more funds in place to offset the cost to taxpayers of closed schools or borrower defense discharges.

There are also institutions that operate title IV, HEA programs without the administrative capability necessary to successfully serve students, for example, where institutions that lack the resources needed to deliver on promises made about career services and externships or where institutions employ principals, affiliates, or other individuals who exercise substantial control over an institution who have a record of misusing title IV, HEA aid funds. A lack of administrative capability can also result in insufficient institutional controls over verifying students' high school diplomas, which are a key criterion for title IV, HEA eligibility.

Furthermore, there have been instances where institutions have exhibited material problems yet remained fully certified to participate in the Federal student aid programs. This full certification status can limit the ability of the Department to remedy problems identified through monitoring until it is potentially too late to improve institutional behavior or prevent a school closure that ends up wasting taxpayer resources in the form of loan discharges, as well as the lost time, resources, and foregone opportunities of students.

To address these concerns, the Department convened a negotiated rulemaking committee, the Institutional and Programmatic Eligibility Committee (Committee), that met between January 18, 2022, and March 18, 2022, to consider proposed regulations for the Federal Student Aid programs authorized under title IV of the HEA (title IV, HEA programs) (see the section under *Negotiated Rulemaking* for more information on the negotiated rulemaking process). The Committee operated by consensus, defined as no dissent by any member at the time of a consensus check. Consensus checks were taken by issue, and the Committee reached consensus on the topic of ATB.

These proposed regulations address five topics: financial value transparency and GE, financial responsibility, administrative capability, certification procedures, and ATB.

Proposed regulations for financial value transparency would address concerns about the rising cost of postsecondary education and training and increased student borrowing by establishing an accountability and transparency framework to encourage eligible postsecondary programs to produce acceptable debt and earnings outcomes, apprise current and prospective students of those outcomes, and provide better information about program price. Proposed regulations for GE would establish eligibility and certification requirements to address ongoing concerns about educational programs that are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings. These programs often lead to default or provide no earnings benefit beyond that provided by a high school education, thus failing to fulfill their intended goal of preparing students for gainful employment. GE programs include nearly all educational programs at for-profit institutions of higher education, as well as most non-degree programs at public and private non-profit institutions.

The proposed financial responsibility regulations establish additional factors that will be viewed by the Department as indicators of an institution's lack of financial responsibility. When one of the factors occurs, the Department may seek financial protection from the institution, most commonly through a letter of credit. The indicators of a lack of financial responsibility proposed in this NPRM are events that put an institution at a higher risk of financial instability and sudden closure. Particular emphasis will be made regarding events that bring about a major change in an institution's composite score, the metric used to

[1] *https://nscresearchcenter.org/wp-content/uploads/SHEEO-NSCRCCollegeClosuresReport.pdf.*

[2] Figure excludes the $1.1 billion in additional closed school discharges for ITT Technical Institute announced in August 2021.

determine an entity's financial strength based on its audited financial statement as described in § 668.172 and Appendices A and B in subpart L of part 668. Other examples of high-risk events that could trigger a finding of a lack of financial responsibility are when an institution is threatened with a loss of State authorization or loses eligibility to participate in a Federal educational assistance program other than those administered by the Department.

The events linked to the proposed financial triggers are often observed in institutions facing possible or probable closure due to financial instability. By allowing the Department to take certain actions in response to specified financial triggers, the proposed regulations provide the Department with tools to minimize the impact of an institution's financial decline or sudden closure. The additional financial protections established in these regulations are critical to offset potential losses sustained by taxpayers when an institution closes and better ensure the Department may take actions in advance of a potential closure to better protect taxpayers against the financial costs resulting from an institutional closure. These protections would also dissuade institutions from engaging in overly risky behavior in the first place. We also propose to simplify the regulations by consolidating the financial responsibility requirements for changes in ownership under proposed part 668, subpart L and removing and reserving current § 668.15.

We propose several additional standards in the administrative capability regulations at § 668.16 to ensure that institutions can appropriately administer the title IV, HEA programs. While current administrative capability regulations include a host of requirements, the Department proposes to address additional concerns which could indicate severe or systemic administrative problems that negatively impact student outcomes and are not currently reflected in those regulations. The Department already requires institutions to provide adequate financial aid counseling to students, for instance. However, many institutions provide financial aid information to students that is confusing and misleading. The information that institutions provide often lacks accurate information about the total cost of attendance, and groups all types of aid together instead of clearly separating grants, loans, and work study aid. The proposed administrative capability regulations would address these issues by specifying required elements to be included in financial aid communications.

We also propose to add an additional requirement for institutions to provide adequate career services to help their students find jobs, particularly where the institution offers career-specific programs and makes commitments about job assistance. Adequate services would be evaluated based on the number of students enrolled in GE programs at the school, the number and distribution of career services staff, the career services the institution promised to its students, and the presence of partnerships between institutions and recruiters who regularly hire graduates. We believe this requirement would help ensure that institutions provide adequate career services to students. The proposed revisions and additions to § 668.16 address these and other concerns that are not reflected in current regulations.

The proposed certification procedures regulations would create a more rigorous process for certifying institutions for initial and ongoing participation in the title IV, HEA programs and better protect students and taxpayers through a program participation agreement (PPA). The proposed revisions to § 668.2, 668.13, and 668.14 aim to protect the integrity of the title IV, HEA programs and to protect students from predatory or abusive behaviors. For example, in § 668.14(e) we propose requiring institutions that are provisionally certified and that we determine to be at risk of closure to submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. This would ensure that the institution has an acceptable plan in place that allows students to continue their education in the event the institution closes.

Finally, the Department proposes revisions to current regulations for ATB. These proposed changes to § 668.156 would clarify the requirements for the approval of a State process. The State process is one of the three ATB alternatives (see the Background section for a detailed explanation) that an individual who is not a high school graduate could fulfill to receive title IV, HEA, Federal student aid for enrollment in an eligible career pathway program. The proposed changes to § 668.157 add documentation requirements for eligible career pathway programs.

Summary of the Major Provisions of this Regulatory Action: The proposed regulations would make the following changes.

Financial Value Transparency and Gainful Employment (§ 600.10, 600.21, 668.2, 668.43, 668.91, 668.401, 668.402, 668.403, 668.404, 668.405, 668.406, 668.407, 668.408, 668.409, 668.601, 668.602, 668.603, 668.604, 668.605, and 668.606)

- Amend § 600.10(c) to require an institution seeking to establish the eligibility of a GE program to add the program to its application.
- Amend § 600.21(a) to require an institution to notify the Secretary within 10 days of any change to information included in the GE program's certification.
- Amend § 668.2 to define certain terminology used in subparts Q and S, including "annual debt-to-earnings rate," "classification of instructional programs (CIP) code," "cohort period," "credential level," "debt-to-earnings rates (D/E rates)," "discretionary debt-to-earnings rates," "earnings premium," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," "gainful employment program (GE program)," "institutional grants and scholarships," "length of the program," "poverty guideline," "prospective student," "student," and "Title IV loan."
- Amend § 668.43 to establish a Department website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide the information required to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.
- Amend § 668.91(a) to require that a hearing official must terminate the eligibility of a GE program that fails to meet the required GE metrics, unless the hearing official concludes that the Secretary erred in the calculation.
- Add a new § 668.401 to provide the scope and purpose of newly established financial value transparency regulations under subpart Q.
- Add a new § 668.402 to provide a framework for the Secretary to determine whether a GE program or eligible non-GE program leads to acceptable debt and earnings results, including establishing annual and discretionary D/E rate metrics and associated outcomes, and establishing an earnings premium metric and associated outcomes.
- Add a new § 668.403 to establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payments, annual earnings, loan debt

and assessed charges, as well as to provide exclusions and specify when D/E rates will not be calculated.

• Add a new § 668.404 to establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings premium measure will not be calculated.

• Add a new § 668.405 to establish a process by which the Secretary will obtain the administrative and earnings data required to issue D/E rates and the earnings premium measure.

• Add a new § 668.406 to require the Secretary to notify institutions of their financial value transparency metrics and outcomes.

• Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.

• Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.

• Add a new § 668.409 to establish severability protections ensuring that if any financial value transparency provision under subpart Q is held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

• Add a new § 668.601 to provide the scope and purpose of newly established GE regulations under subpart S.

• Add a new § 668.602 to establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.

• Add a new § 668.603 to define the conditions under which a failing GE program would lose title IV, HEA eligibility, to provide the opportunity for an institution to appeal a loss of eligibility only on the basis of a miscalculated D/E rate or earnings premium, and to establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.

• Add a new § 668.604 to require institutions to provide the Department with transitional certifications, as well as to certify when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution's recognized accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency.

• Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of a loss of title IV, HEA eligibility, to specify the content and delivery requirements for such notifications, and to provide that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

• Add a new § 668.606 to establish severability protections ensuring that if any GE provision under subpart S is held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

Financial Responsibility (§§ 668.15, 668.23, and 668, subpart L §§ 171, 174, 175, 176 and 177)

• Remove and reserve § 668.15 thereby consolidating all financial responsibility factors, including those governing changes in ownership, under part 668, subpart L.

• Amend § 668.23(a) to require that audit reports are submitted in a timely manner, which would be the earlier of 30 days after the date of the report or six months after the end of the institution's fiscal year.

• Amend § 668.23(d) to require that financial statements submitted to the Department must match the fiscal year end of the entity's annual return(s) filed with the Internal Revenue Service. We would further amend § 668.23(d) to require the institution to include a detailed description of related entities with a level of detail that would enable the Department to readily identify the related party. Such information must include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred. Section 668.23(d) would also be amended to require that any domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution must provide documentation of the entity's status under the law of the jurisdiction under which the entity is organized. Additionally, we would amend § 668.23(d) to require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

• Amend § 668.171(b) to require institutions to demonstrate that they are able to meet their financial obligations by noting additional cases that constitute a failure to do so, including failure to make debt payments for more than 90 days, failure to make payroll obligations, or borrowing from employee retirement plans without authorization.

• Amend § 668.171(c) to revise the set of conditions that automatically require posting of financial protection if the event occurs as prescribed in the regulations. These mandatory triggers are designed to measure external events that pose risk to an institution, financial circumstances that may not appear in the institution's regular financial statements, or financial circumstances that may not yet be reflected in the institution's composite score. Some examples of these mandatory triggers include when, under certain circumstances, there is a withdrawal of owner's equity by any means and when an institution loses eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.

• Amend § 668.171(d) to revise the set of conditions that may, at the discretion of the Department, require posting of financial protection if the event occurs as prescribed in the regulations. These discretionary triggers are designed to measure external events or financial circumstances that may not appear in the institution's regular financial statements and may not yet be reflected in the institution's composite score. An example of these discretionary triggers is when an institution is cited by a State licensing or authorizing agency for failing to meet State or agency requirements. Another example is when the institution experiences a significant fluctuation between consecutive award years or a period of award years in the amount of Federal Direct Loan or Federal Pell Grant funds that cannot be accounted for by changes in those title IV, HEA programs.

• Amend § 668.171(f) to revise the set of conditions whereby an institution must report to the Department that a triggering event, described in § 668.171(c) and (d), has occurred.

• Amend § 668.171(h) to adjust the language regarding an auditor's opinion of doubt about the institution's ability to continue operations to clarify that the Department may independently assess whether the auditor's concerns have been addressed or whether the opinion of doubt reflects a lack of financial responsibility.

- Amend § 668.174(a) to clarify the language related to compliance audit or program review findings that lead to a liability of greater than 5 percent of title IV, HEA volume at the institution, so that the language more clearly states that the timeframe of the preceding two fiscal years timeframe relates to when the reports containing the findings in question were issued and not when the reviews were actually conducted.
- Add a new proposed § 668.176 to consolidate financial responsibility requirements for institutions undergoing a change in ownership under § 668, subpart L.
- Redesignate the existing § 668.176, establishing severability, as § 668.177 with no change to the regulatory text.

Administrative Capability (§ 668.16)

- Amend § 668.16(h) to require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available to enrolled students that includes clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts.
- Amend § 668.16(k) to require that an institution not have any principal or affiliate whose misconduct or closure contributed to liabilities to the Federal government in excess of 5 percent of that institution's title IV, HEA program funds in the award year in which the liabilities arose or were imposed.
- Add § 668.16(n) to require that the institution has not been subject to a significant negative action or a finding by a State or Federal agency, a court, or an accrediting agency, where in which the basis of the action or finding is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive; and to further require that the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.
- Amend § 668.16(p) to strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.
- Add § 668.16(q) to require that institutions provide adequate career services to eligible students who receive title IV, HEA program assistance.
- Add § 668.16(r) to require that an institution provide students with accessible clinical, or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation, within 45 days of the successful completion of other required coursework.
- Add § 668.16(s) to require that an institution timely disburses funds to students consistent with the students' needs.
- Add § 668.16(t) to require institutions to meet new standards for their GE programs, as outlined in regulation.
- Add § 668.16(u) to require that an institution does not engage in misrepresentations or aggressive and deceptive recruitment.

Certification Procedures (§§ 668.2, 668.13, and 668.14)

- Amend § 668.2 to add a definition of ''metropolitan statistical area.''
- Amend § 668.13(b)(3) to eliminate the provision that requires the Department to approve participation for an institution if it has not acted on a certification application within 12 months so the Department can take additional time where it is needed.
- Amend § 668.13(c)(1) to include additional events that lead to provisional certification, such as if an institution triggers one of the new financial responsibility triggers proposed in this rule.
- Amend § 668.13(c)(2) to require provisionally certified schools that have major consumer protection issues to recertify after no more than two years.
- Add a new § 668.13(e) to establish supplementary performance measures the Secretary may consider in determining whether to certify or condition the participation of the institution.
- Amend § 668.14(a)(3) to require an authorized representative of any entity with direct or indirect ownership of a private institution to sign a PPA.
- Amend § 668.14(b)(17) to include all Federal agencies and add State attorneys general to the list of entities that have the authority to share with each other and the Department any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law.
- Amend § 668.14(b)(26)(ii) to limit the number of hours in a GE program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, or the required minimum number of hours required for training in another State, if the institution provides documentation of that State meeting one of three qualifying requirements to use a State in which the institution is not located that is substantiated by the certified public accountant who prepares the institution's compliance audit report as required under § 668.23.
- Amend § 668.14(b)(32) to require all programs that are designed to lead to employment in occupations requiring completion of a program that is programmatically accredited as a condition of State licensure to meet those requirements.
- Amend § 668.14(e) to establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions, such as the submission of a teach-out plan or agreement.
- Amend § 668.14(f) to establish conditions that may apply to institutions that undergo a change in ownership seeking to convert from a for-profit institution to a nonprofit institution.
- Amend § 668.14(g) to establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.

Ability To Benefit (§§ 668.2, 668.32, 668.156, and 668.157)

- Amend § 668.2 to add a definition of ''eligible career pathway program.''
- Amend § 668.32 to differentiate between the title IV, HEA aid eligibility of non-high school graduates that enrolled in an eligible program prior to July 1, 2012, and those that enrolled after July 1, 2012.
- Amend § 668.156(b) to separate the State process into an initial two-year period and a subsequent period for which the State may be approved for up to five years.
- Amend § 668.156(a) to strengthen the Approved State process regulations to require that: (1) The application contain a certification that each eligible career pathway program intended for use through the State process meets the proposed definition of an eligible career pathway program in regulation; (2) The application describe the criteria used to determine student eligibility for participation in the State process; (3) The withdrawal rate for a postsecondary institution listed for the first time on a State's application not exceed 33 percent; (4) That upon initial

application the Secretary will verify that a sample of the proposed eligible career pathway programs meet statutory and regulatory requirements; and (5) That upon initial application the State will enroll no more than the greater of 25 students or one percent of enrollment at each participating institution.

• Amend § 668.156(c) to remove the support services requirements from the State process which include: orientation, assessment of a student's existing capabilities, tutoring, assistance in developing educational goals, counseling, and follow up by teachers and counselors.

• Amend the monitoring requirement in § 668.156(c)(4) to provide a participating institution that did not achieve the 85 percent success rate up to three years to achieve compliance.

• Amend § 668.156(c)(6) to prohibit an institution from participating in the State process for title IV, HEA purposes for at least five years if the State terminates its participation.

• Amend § 668.156 to clarify that the State is not subject to the success rate requirement at the time of the initial application but is subject to the requirement for the subsequent period, reduce the required success rate from the current 95 percent to 85 percent, and specify that the success rate be calculated for each participating institution. Also, amend the comparison groups to include the concept of ''eligible career pathway programs.''

• Amend § 668.156 to require that States report information on race, gender, age, economic circumstances, and educational attainment and permit the Secretary to release a **Federal Register** notice with additional information that the Department may require States to submit.

• Amend § 668.156 to update the Secretary's ability to revise or terminate a State's participation in the State process by (1) providing the Secretary the ability to approve the State process once for a two-year period if the State is not in compliance with a provision of the regulations and (2) allowing the Secretary to lower the success rate to 75 percent if 50 percent of the participating institutions across the State do not meet the 85 percent success rate.

• Add a new § 668.157 to clarify the documentation requirements for eligible career pathway programs.

Costs and benefits: The Department estimates that the proposed regulations would generate benefits to students, postsecondary institutions, and the Federal government that exceed the costs. The Department also estimates substantial transfers, primarily in the form of reduced net title IV, HEA spending by the Federal government. Net benefits are created primarily by shifting students from low-financial-value to high-financial-value programs or, in some cases, away from low-financial-value postsecondary programs to non-enrollment. This shift would be due to improved and standardized market information about all postsecondary programs that would facilitate better decision making by current and prospective students and their families; the public, taxpayers, and the government; and institutions. Furthermore, the GE component would improve the quality of options available to students by directly eliminating the ability of low-financial-value GE programs to receive title IV, HEA funds. This enrollment shift and improvement in program quality would result in higher earnings for students, which would generate additional tax revenue for Federal, State, and local governments. Students would also benefit from lower accumulated debt and lower risk of default. The proposed regulations would also generate substantial transfers, primarily in the form of title IV, HEA aid shifting between students, postsecondary institutions, and the Federal government, generating a net budget savings for the Federal government. Other components of this proposed regulation related to financial responsibility would provide benefits to the Department and taxpayers by increasing the amount of financial protection available before an institution closes or incurs borrower defense liabilities. This would also help dissuade unwanted behavior and benefit institutions that are in stronger financial shape by dissuading struggling institutions from engaging in questionable behaviors to gain a competitive advantage in increasing enrollment. Similarly, the changes to administrative capability and certification procedures would benefit the Department in increasing its quality of oversight of institutions so that students have more valuable options when they enroll. Finally, the ATB regulations would provide needed clarity to institutions and States on how to serve students who do not have a high school diploma.

The primary costs of the proposed regulations related to the financial value transparency and GE accountability requirements are the additional reporting required by institutions, the time for students to acknowledge having seen disclosures, and additional spending at institutions that accommodate students who would otherwise have decided to attend failing programs. The proposed regulations may also dissuade some students from enrolling that otherwise would have benefited from doing so. For the financial responsibility portion of the proposed regulations, costs would be primarily related to the expense of providing financial protection to the Department as well as transfers that arise from shifting the cost and burden of closed school discharges from the taxpayer to the institution and the entities that own it. Costs related to certification procedures and administrative capability would be related to any necessary steps to comply with the added requirements. Finally, States and institutions would have some added administrative expenses to administer the proposed ability-to-benefit processes.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subjects addressed in the proposed regulations.

During and after the comment period, you may inspect public comments about these proposed regulations on the *Regulations.gov* website.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Financial Value Transparency and Gainful Employment (§§ 600.10, 600.21, 668.2, 668.43, 668.91, 668.401, 668.402, 668.403, 668.404, 668.405, 668.406, 668.407, 668.408, 668.409, 668.601, 668.602, 668.603, 668.604, 668.605, and 668.606)

Postsecondary education and training generate important benefits both to the students pursuing new knowledge and skills and to the Nation overall. Higher education increases wages and lowers unemployment risk,[3] and leads to myriad non-financial benefits including better health, job satisfaction, and overall happiness.[4] In addition, increasing the number of individuals with postsecondary education creates social benefits, including productivity spillovers from a better educated and more flexible workforce,[5] increased civic participation,[6] improvements in health and well-being for the next generation,[7] and innumerable intangible benefits that elude quantification. The improvements in productivity and earnings lead to increases in tax revenues from higher earnings and lower rates of reliance on social safety net programs. These downstream increases in net revenue to the government can be so large that public investments in higher education more than pay for themselves.[8]

These benefits are not guaranteed, however. Research has demonstrated that the returns, especially the gains in earnings students enjoy as a result of their education, vary dramatically across institutions and among programs within those institutions.[9] As we illustrate in the Regulatory Impact Analysis of this proposed rule, even among the same types of programs—that is, among programs with similar academic levels and fields of study—both the costs and the outcomes for students differ widely. Most postsecondary programs provide benefits to students in the form of higher wages that help them repay any loans they may have borrowed to attend the program. But too many programs fail to increase graduates' wages, having little, or even negative, effects on graduates' earnings.[10] At the same time, too many programs charge much higher tuition than similar programs with comparable outcomes, leading students to borrow much more than they could have had they attended a more affordable option.

With college tuition consistently rising faster than inflation, and given the growing necessity of a postsecondary credential to compete in today's economy, it is critical for students, families, and taxpayers alike to have accurate and transparent information about the possible financial consequences of their postsecondary program career options when choosing whether and where to enroll. Providing information on the typical earnings outcomes, borrowing amounts, cost of attendance, and sources of financial aid—and providing it directly to prospective students in a salient way at a key moment in their decision-making process—would help students make more informed choices and would allow taxpayers and college stakeholders to better monitor whether public and private resources are being well used. For many students these financial considerations would, appropriately, be just one of many factors used in deciding whether and where to enroll.

For programs that consistently produce graduates with very low earnings, or with earnings that are too low to repay the amount the typical graduate borrows to complete a credential, additional measures are needed to protect students from financial harm. Although making information available has been shown to improve consequential financial choices across a variety of settings, it is a limited remedy, especially for more vulnerable populations that may have less support in interpreting and acting upon the relevant information.[11 12] We believe that providing more detailed information about the debt and earnings outcomes of specific educational programs would assist students in making better informed choices about whether and where to enroll.

To address these issues, the Department proposes to amend §§ 600.10, 600.21, 668.2, 668.13, 668.43, and 668.98, and to establish subparts Q and S of part 668. Through this proposed regulatory action, the Department seeks to establish the following requirements:

(1) In subpart Q, a financial value transparency framework that would increase the quality and availability of information provided directly to students about the costs, sources of financial aid, and outcomes of students enrolled in all eligible programs. The framework establishes measures of the earnings premium that typical program graduates experience relative to the earnings of typical high school graduates, as well as the debt service burden for typical graduates. It also establishes performance benchmarks for each measure, denoting a threshold level of performance below which the program may have adverse financial consequences to students. This information would be made available via a website maintained by the Department, and in some cases students and prospective students would be required to acknowledge viewing these disclosures before receiving title IV, HEA funds to attend programs with poor outcomes. Further, the website would provide the public, taxpayers, and the government with relevant information to better safeguard the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they could use to benchmark their performance to other institutions and improve student outcomes in these programs.

(2) In subpart S, we propose an accountability framework for career training programs (also referred to as gainful employment, or GE, programs)

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[3] Barrow, L., & Malamud, O. (2015). Is College a Worthwhile Investment? *Annual Review of Economics,* 7(1), 519–555.

Card, D. (1999). The causal effect of education on earnings. *Handbook of labor economics,* 3, 1801–1863.

[4] Oreopoulos, P., & Salvanes, K.G. (2011). Priceless: The Nonpecuniary Benefits of Schooling. *Journal of Economic Perspectives,* 25(1), 159–184.

[5] Moretti, E. (2004). Workers' Education, Spillovers, and Productivity: Evidence from Plant-Level Production Functions. *American Economic Review,* 94(3), 656–690.

[6] Dee, T.S. (2004). Are There Civic Returns to Education? *Journal of Public Economics,* 88(9–10), 1697–1720.

[7] Currie, J., & Moretti, E. (2003). Mother's Education and the Intergenerational Transmission of Human Capital: Evidence from College Openings. *The Quarterly Journal of Economics,* 118(4), 1495–1532.

[8] Hendren, N., & Sprung-Keyser., B. (2020). A Unified Welfare Analysis of Government Policies. *The Quarterly Journal of Economics,* 135(3), 1209–1318.

[9] Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education,* C.M. Hoxby and K.M. Stange (eds). University of Chicago Press: Chicago, 2019.

Lovenheim, M. and J. Smith. 2023. Returns to Different Postsecondary Investments: Institution Type, Academic Programs, and Credentials. In *Handbook of the Economics of Education Volume 6,* E. Hanushek, L. Woessmann, and S. Machin (Eds). New Holland.

[10] Cellini, S. and Turner, N. 2018. Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data. Journal of Human Resources. 54(2).

[11] Dominique J. Baker, Stephanie Riegg Cellini, Judith Scott-Clayton, and Lesley J. Turner, ''Why information alone is not enough to improve higher education outcomes,'' The Brookings Institution (2021). *www.brookings.edu/blog/brown-center-chalkboard/2021/12/14/why-information-alone-is-not-enough-to-improve-higher-education-outcomes/.*

[12] Mary Steffel, Dennis A. Kramer II, Walter McHugh, Nick Ducoff, ''Information disclosure and college choice,'' The Brookings Institution (2019). *www.brookings.edu/wp-content/uploads/2020/11/ES-11.23.20-Steffel-et-al-1.pdf.*

that uses the same earnings premium and debt-burden measures to determine whether a GE program remains eligible for title IV, HEA program funds. The GE eligibility criteria are designed to define what it means to prepare students for gainful employment in a recognized occupation, and they tie program eligibility to whether GE programs provide education and training to their title IV, HEA students that lead to earnings beyond those of high school graduates and sufficient to allow students to repay their student loans. GE programs that fail the same measure in any two out of three consecutive years for which the measure is calculated would lose eligibility for participation in title IV, HEA programs.

Sections 102(b) and (c) of the HEA define, in part, a proprietary institution and a postsecondary vocational institution as one that provides an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 101(b)(1) of the HEA defines an institution of higher education, in part, as any institution that provides not less than a one-year program of training that prepares students for gainful employment in a recognized occupation. The statute does not further specify this requirement, and through multiple reauthorizations of the HEA, Congress has neither further clarified the concept of gainful employment, nor curtailed the Secretary's authority to further define this requirement through regulation, including when Congress exempted some liberal arts programs offered by proprietary institutions from the gainful employment requirement in the Higher Education Opportunity Act of 2008.

The Department previously issued regulations on this topic three times. In 2011, the Department published a regulatory framework to determine the eligibility of a GE program based on three metrics: (1) Annual debt-to-earnings (D/E) rate, (2) Discretionary D/E rate, and (3) Loan repayment rate. We refer to that regulatory action as the 2011 Prior Rule (76 FR 34385). Following a legal challenge, the program eligibility measures in the 2011 Prior Rule were vacated on the basis that the Department had failed to adequately justify the loan repayment rate metric.[13] In 2014, the Department issued new GE regulations, which based eligibility determinations on only the annual and discretionary D/E rates as accountability metrics, rather than the loan repayment rate metric that had been the core source of concern to the district court in previous litigation, and included disclosure requirements about program outcomes. We refer to that regulatory action as the 2014 Prior Rule (79 FR 64889). The 2014 Prior Rule was upheld by the courts except for certain appeal procedures used to demonstrate alternate program earnings.[14] [15] [16]

The Department rescinded the 2014 Prior Rule in 2019 based on its judgments and assessments at the time, citing: the inconsistency of the D/E rates with the requirements of other repayment options; that the D/E rates failed to properly account for factors other than program quality that affect student earnings and other outcomes; a lack of evidence for D/E thresholds used to differentiate between ''passing,'' ''zone,'' and ''failing'' programs; that the disclosures required by the 2014 Prior Rule included some data, such as job placement rates, that were deemed unreliable; that the rule failed to provide transparency regarding debt and earnings outcomes for all programs, leaving students considering enrollment options about both non-profit and proprietary institutions without information; and relatedly, that a high percentage of GE programs did not meet the minimum cohort size threshold and were therefore not included in the debt-to-earnings calculations.[17] In light of the Department's reasoning at the time, the 2019 Prior Rule (*i.e.,* the action to rescind the 2014 Prior Rule) eliminated any accountability framework in favor of non-regulatory updates to the College Scorecard on the premise that transparency could encourage market forces to bring accountability to bear.

This proposed rule departs from the 2019 rescission, as well as the 2014 Prior Rule, for reasons that are previewed here and elaborated on throughout this preamble.[18] At the highest level, the Department remains concerned about the same problems documented in the 2011 and 2014 Prior Rules. Too many borrowers struggle to repay their loans, evidenced by the fact that over a million borrowers defaulted on their loans in the year prior to the payment pause that was put in place due to the COVID–19 pandemic. The Regulatory Impact Analysis (RIA) shows these problems are more prevalent among programs where graduates have high debts relative to their income, and where graduates have low earnings. While both existing and proposed changes to income-driven repayment plans (''IDR'') for Federal student loans partially shield borrowers from these risks, such after-the-fact protections do not address underlying program failures to prepare students for gainful employment in the first place, and they exacerbate the impact of such failures on taxpayers as a whole when borrowers are unable to pay. Not all borrowers participate in these repayment plans and, where they do, the risks of nonpayment are shifted to taxpayers when borrowers' payments are not sufficient to fully pay back the loans they borrowed. This is because borrowers with persistently low incomes who enroll in IDR—and thereby make payments based on a share of their income that can be as low as $0—will see their remaining balances forgiven at taxpayer expense after a specified number of years (*e.g.,* 20 or 25) in repayment.

The Department recognizes that, given the high cost of education and correspondingly high need for student debt, students, families, institutions, and the public have an acute interest in ensuring that higher education investments are justified through positive repayment and earnings outcomes for graduates. The statute acknowledges there are differences across programs and colleges and this means we have different tools available to promote these goals in different contexts. Recognizing this fact, for programs that the statute requires to prepare students for gainful employment in a recognized occupation, we propose reinstating a version of the debt-to-earnings requirement established under the 2014 Prior Rule and adding an earnings premium metric to the GE accountability framework. At the same time, we propose expanding disclosure requirements to all eligible programs and institutions to ensure all students have the benefit of access to accurate information on the financial consequences of their education program choices.

First, the proposed rule incorporates a new accountability metric—an earnings premium (EP)—that captures a distinct aspect of the value provided by a program. The earnings premium measures the extent to which the typical graduate of a program out-earns the typical individual with only a high school diploma or equivalent in the same State the program is located. In

[13] *Ass'n of Priv. Colleges & Universities* v. *Duncan,* 870 F. Supp. 2d 133 (D.D.C. 2012).

[14] *Ass'n of Proprietary Colleges* v. *Duncan,* 107 F. Supp. 3d 332 (S.D.N.Y. 2015).

[15] *Ass'n of Priv. Sector Colleges & Universities* v. *Duncan,* 110 F. Supp. 3d 176 (D.D.C. 2015), *aff'd,* 640 F. App'x 5 (D.C. Cir. 2016) (per curiam).

[16] *Am. Ass'n of Cosmetology Sch.* v. *DeVos,* 258 F. Supp. 3d 50 (D.D.C. 2017).

[17] 84 FR 31392.

[18] We discuss potential reliance interests regarding all parts of the proposed rule below, in the ''Reliance Risks'' section.

order to be considered a program that prepares students for gainful employment in a recognized occupation, we propose that programs must both have graduates whose typical debt levels are affordable, based on a similar debt-to-earnings (D/E) test as used in the 2014 Prior Rule, and also have a positive earnings premium.

Second, we propose to calculate and require disclosures of key information about the financial consequences of enrolling in higher education programs for almost all eligible programs at all institutions. As we elaborate below and in the RIA, we believe this will help students understand differences in the costs, borrowing levels, and labor market outcomes of more of the postsecondary options they might be considering. It is particularly important for students who are considering or attending a program that may carry a risk of adverse financial outcomes to have access to comparable information across all sectors so they can explore other options for enrollment and potentially pursue a program that is a better financial value.

As further explained in the significant proposed regulations section of this Notice and in the RIA, there are several connected reasons for adding the EP metric to the proposed rule.[19] First, the Department believes that, for postsecondary career training programs to be deemed as preparing students for gainful employment, they should enable students to secure employment that provides higher earnings than what they might expect to earn if they did not pursue a college credential. This position is consistent with the ordinary meaning of the phrase ''gainful employment'' and the purposes of the title IV, HEA programs, which generally require students who receive assistance to have already completed a high school education,[20] and then require GE programs ''to prepare'' those high school graduates for ''gainful employment'' in a recognized occupation.[21] Clearly, GE programs are supposed to add to what high school graduates already have achieved in their preparation for gainful employment, not leave them where they started. We propose to measure that gain, in part, with an administrable test that is pegged to earnings beyond a typical high school graduate. This approach is likewise supported by the fact that the vast majority of students cite the opportunity for a good job or higher earnings as a key, if not the most important, reason they chose to pursue a college degree.[22]

Furthermore, the EP metric that we propose would set only reasonable expectations for programs that are supposed to help students move beyond a high school baseline. The median earnings of high school graduates is about $25,000 nationally, which corresponds to the earnings level of a full-time worker at an hourly wage of about $12.50 (lower than the State minimum wage in 15 States).[23] While the 2014 Prior Rule emphasized that borrowers should be able to earn enough to afford to repay their debts, the Department recognizes that borrowers need to be able to afford more than ''just'' their loan payments, and that postsecondary programs should help students reach a minimal level of labor market earnings. Exceeding parity with the earnings of students who never attend college is a modest expectation.

Another benefit of adding the EP metric is that it helps protect students from the adverse borrowing outcomes prevalent among programs with very low earnings. Research conducted since the 2014 Prior Rule as well as new data analyses shown in this RIA illustrate that, for borrowers with low earnings, even small amounts of debt (including levels of debt that would not trigger failure of the D/E rates) can be unmanageable. Default rates tend to be especially high among borrowers with lower debt levels, often because these borrowers left their programs and as a result have very low earnings.[24] Analyses in this RIA show that the default rate among students in programs that pass the D/E thresholds but fail the earnings premium are very high—even higher than programs that fail the D/E measure but pass the earnings premium measure.

Finally, as detailed further below, the EP measure helps protect taxpayers. Borrowers with low earnings are eligible for reduced loan payments and loan forgiveness which increase the costs of the title IV, HEA loan program to taxpayers.

While the EP and D/E metrics are related, they measure distinct dimensions of gainful employment, further supporting the proposal to require that programs pass both measures. For example, programs that have median earnings of graduates above the high school threshold might still be so expensive as to require excessive borrowing that students will struggle to repay. And, on the other hand, even if debt levels are low relative to a graduate's earnings, those earnings might still be no higher than those of the typical high school graduate in the same State.

As noted above, the D/E metrics and thresholds in the proposed rule mirror those in the 2014 Prior Rule and are based on both academic research about debt affordability and industry practice. Analyses in the Regulatory Impact Analysis (RIA) of this proposed rule illustrate that borrowers who attended programs that fail the D/E rates are more likely to struggle with their debt. For example, programs that fail the proposed D/E standards (including both GE and non-GE programs) account for just 4.1 percent of title IV enrollments (*i.e.,* Federally aided students), but 11.19 percent of all students who default within 3 years of entering repayment. GE programs represent 15.2 percent of title IV, HEA enrollments overall, but 49.6 percent of title IV, HEA enrollments within the programs that fail the D/E standards and 65.6 percent of the defaulters. These facts, in part, motivate the Department's proposal to calculate and disclose D/E and EP rates for all programs under proposed subpart Q, while establishing additional accountability for GE programs with persistently low performance in the form of loss of title IV, HEA eligibility under proposed subpart S.

In addition to ensuring that career training programs ensure that graduates attain at least a minimal level of earnings and have borrowing levels that are manageable, the two metrics in the proposed rule also protect taxpayers from the costs of low financial value programs. For example, the RIA presents estimates of loan repayment under the hypothetical assumption that all borrowers pay on either (1) the most generous repayment plan or (2) the most generous plan that would be available under the income-driven repayment rule proposed by the Department in January (88 FR 1894). These analyses show that both D/E rates and the

[19] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see below at ''Authority for this Regulatory Action,'' and at ''668.402 Financial value transparency framework'' and ''668.602 Gainful employment criteria'' under the Significant Proposed Regulations section of this Notice. Those discussions also address the D/E metric.

[20] See, for example, 20 U.S.C. 1001(a)(1), 1901.

[21] 20 U.S.C. 1002(b)(1)(A), (c)(1)(A). See also 20 U.S.C. 1088(b)(1)()(i), which refers to a recognized profession.

[22] For example, a recent survey of 2,000 16 to 19 year olds and 2,000 22 to 30 year old recent college graduates rated affordable tuition, higher income potential, and lower student debt as the top 3 to 4 most important factors in choosing a college (*https://www.nytimes.com/2023/03/27/opinion/problem-college-rankings.html*). The RIA includes citation to other survey results with similar findings.

[23] See *https://www.dol.gov/agencies/whd/mw-consolidated.*

[24] See *https://libertystreeteconomics.newyorkfed.org/2015/02/looking_at_student_loan_defaults_through_a_larger_window/.*

earnings premium metrics are strongly correlated with an estimated subsidy rate on Federal loans, which measures the share of a disbursed loan that will not be repaid, and thus provides a proxy for the cost of loans to taxpayers. In short, the D/E and earnings premium metrics are well targeted to programs that generate a disproportionate share of the costs to taxpayers and negative borrower outcomes that the Department seeks to improve.

We have also reconsidered the concerns raised in the 2019 Prior Rule about the effect of some repayment options on debt-to-earnings rates. We recognize that some repayment plans offered by the Department allow borrowers to repay their loans as a fraction of their income, and that this fraction is lower for some plans than the debt-to-earnings rate used to determine ineligibility under this proposed rule and the 2014 Prior Rule. For example, under the Revised Pay-As-You-Earn (REPAYE) income-driven repayment plan, borrowers' monthly payments are set at 10 percent of their discretionary income, defined as income in excess of 150 percent of the Federal poverty guideline (FPL). Noting that many borrowers continue to struggle to repay, the Department has proposed more generous terms, allowing borrowers to pay 5 percent of their discretionary income (now redefined as income in excess of 225 percent of the FPL) to repay undergraduate loans, and 10 percent of their discretionary income to repay graduate loans.[25]

Income driven repayment plans are aimed at alleviating the burden of high debt for students who experience unanticipated circumstances, beyond an institution's control, that adversely impact their ability to repay their debts. While the Department believes it is critical to reduce the risk of unexpected barriers that borrowers face, and to protect borrowers from delinquency, default and the associated adverse credit consequences, it would be negligent to lower our accountability standards across the entire population as a result and to permit institutions to encumber students with even more debt while expecting taxpayers to pay more for poor outcomes related to the educational programs offered by institutions. Instead, we view the D/E rates as an appropriate measure of what students can borrow and feasibly repay. Put another way, the D/E provisions proposed in this rule define a maximum amount of borrowing as a function of students' earnings that would leave the typical program graduate in a position to pay off their debt without having to rely on payment assistance programs like income-driven repayment plans.

The concerns raised by the 2019 Prior Rule about the effect of student demographics on the debt and earnings measures used in the 2014 Prior Rule (which we also propose to use in this NPRM) are addressed at length in this NPRM's RIA. The Department has considered that discrimination based on gender identity or race and ethnicity may influence the aggregate outcomes of programs that disproportionately enroll members of those groups. However, our analyses, and an ever-increasing body of academic research, strongly rebut the claim that differences across programs are solely or primarily a reflection of the demographic or other characteristics of the students enrolled.[26] Moreover, consistent with recurring allegations in student complaints and qui tam lawsuits (a type of lawsuit through which private individuals who initiate litigation on behalf of the government can receive for themselves all or part of the damages or penalties recovered by the government), through our compliance oversight activities including program reviews, the Department has concluded that many institutions aggressively recruit individuals with low income, women, and students of color into programs with substandard quality and poor outcomes and then claim their outcomes are poor because of the ''access'' they provide to such individuals. An analysis of the effects on access presented in the RIA demonstrates that more than 90 percent of students enrolled in failing programs have at least one non-failing option within the same geographic area, credential level, and broad field. These alternative programs usually entail lower borrowing, higher earnings, or both.

The Department has also reconsidered concerns raised in the 2019 Prior Rule about the basis for proposed thresholds for debt-to-earnings rates. We have re-reviewed the research underpinning those thresholds. This includes considering concerns raised by one researcher about the way the Department interpreted one of her studies in the 2019 Prior Rule.[27] From this, we have proposed using one set of thresholds that are based upon research and industry practice. This departs from prior approaches that distinguished between programs in a ''zone'' versus ''failing.''

The 2019 Prior Rule also raised concerns about the inclusion of potentially unreliable metrics. We agree with this conclusion with respect to job placement and thus do not propose including job placement rates among the proposed disclosures required from institutions.[28] Because inconsistencies in how institutions calculate job placement rates limit their usefulness to students and the public in comparing institutions and programs, until we find a meaningful and comparable measure, the Department does not rely upon job placement rates in this proposed rule.

The Department also considered concerns raised in the 2019 Prior Rule that the accountability framework was flawed because many programs did not have enough graduates to produce data. Since many programs produce only a small number of graduates each year, it is unavoidable that the Department will not be able to publish debt and earnings based aggregate statistics for such programs to protect the privacy of the individual students attending them or to ensure that the data from those programs are adequately reliable. As further explained in our discussion of proposed § 668.405, the IRS adds a small amount of statistical noise to earnings data for privacy protection purposes, which would be greater for populations smaller than 30.

While the Department is mindful of the fractions of programs likely covered, we also are concentrating on the numbers of people who may benefit from the metrics: enrolled students, prospective students, their families, and others. Despite the data limitations noted above, under the proposed regulations, we estimate that programs representing 69 and 75 percent of all title IV, HEA enrollment in eligible non-GE programs and GE programs,

[25] 88 FR 1902 (Jan. 11, 2023).

[26] Christensen, Cody and Turner, Lesley. (2021) Student Outcomes at Community Colleges: What Factors Explain Variation in Loan Repayment and Earnings? The Brookings Institution. Washington, DC. *https://www.brookings.edu/wp-content/uploads/2021/09/Christensen_Turner_CC-outcomes.pdf*. lack, Dan A., and Jeffrey A. Smith. ''Estimating the returns to college quality with multiple proxies for quality.'' *Journal of labor Economics* 24.3 (2006): 701–728.

Cohodes, Sarah R., and Joshua S. Goodman. ''Merit aid, college quality, and college completion: Massachusetts' Adams scholarship as an in-kind subsidy.'' *American Economic Journal: Applied Economics* 6.4 (2014): 251–285.

Andrews, Rodney J., Jing Li, and Michael F. Lovenheim. ''Quantile treatment effects of college quality on earnings.'' *Journal of Human Resources* 51.1 (2016): 200–238.

Dillon, Eleanor Wiske, and Jeffrey Andrew Smith. ''The consequences of academic match between students and colleges.'' *Journal of Human Resources* 55.3 (2020): 767–808.

[27] *www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation*.

[28] These rates were not required disclosures under the 2014 Prior Rule, but rather among a list of items that the Secretary may choose to include.

respectively, would have debt and earnings measures available to produce the metrics. We further estimate the share of enrollment that would additionally be covered under the four-year cohort approach (discussed later in this NPRM) by examining the share of enrollment in programs that have fewer than 30 graduates in our data for a two-year cohort, but at least 30 in a four-year cohort. Under this approach, we estimate that an additional 13 percent of eligible non-GE enrollment and 8 percent of GE enrollment would be covered. All told, the metrics could be produced for programs that enroll approximately 82 percent of all students. These students are enrolled in 34 percent of all eligible non-GE programs and 26 percent of all GE programs.[29]

The metrics that we could calculate, therefore, would show results for postsecondary education programs that are attended by the large majority of enrolled students. Those numbers would be directly relevant to those students. And it seems reasonable to further conclude that the covered programs will be the primary focus of attention for the majority of prospective students, as well. The programs least likely to be covered will be the smallest in terms of the number of completers (and likely enrollment), which is correlated with the breadth of interest among those considering enrolling in those programs. We acknowledge that these programs represent potential options for future and even current enrollees, and that relatively small programs might be different in various ways from programs with larger enrollments. At the same time, the Department does not view the fraction of programs covered by D/E and EP as the most important metric. The title IV, HEA Federal student aid programs, after all, provide aid to students directly, making the share of students covered a natural focus of concern. The Department believes that the benefits of providing this information to millions of people about programs that account for the majority of students far outweighs the downside of not providing data on the smallest programs. Furthermore, even for students interested in smaller programs, the outcome measures for other programs at the same institution may be of interest.

The Department continues to agree with the stance taken in the 2019 Prior Rule that publishing metrics that help students, families, and taxpayers understand the financial value of all programs is important. Prospective students often consider enrollment options at public, for profit, and non-profit institutions simultaneously and deserve comparable information to assess the financial consequences of their choices. A number of research studies show that such information, when designed well, delivered by a trusted source, and provided at the right time can help improve choices and outcomes.[30] However, as further discussed under ''§ 668.401 Financial value transparency scope and purpose,'' merely posting the information on the College Scorecard website has had a limited impact on enrollment choices. Consequently, our proposed rule, in subpart Q below, outlines a financial value transparency framework that proposes measures of debt-to-earnings and earnings premiums that would be calculated for nearly all programs at all institutions. To help ensure students are aware of these outcomes when financial considerations may be particularly important, the framework includes a requirement that all students receive a link to program disclosures including this information, and that students seeking to enroll in programs that do not meet standards on the relevant measures would need to acknowledge viewing that information prior to the disbursement of title IV, HEA funds.

At the same time, the Department believes that the transparency framework alone is not sufficient to protect students and taxpayers from programs with persistently poor financial value outcomes.[31] [32] The available information continues to suggest that graduates of some GE programs have earnings below what could be reasonably expected for someone pursuing postsecondary education. In the Regulatory Impact Analysis, the Department shows that about 460,000 students per year, comprising 16 percent of all title IV, HEA recipients enrolled in GE programs annually, attend GE programs where the typical graduate earns less than the typical high school graduate, and an additional 9 percent of those enrolled in GE programs have unmanageable debt.[33] These rates are much higher among GE programs than eligible non-GE programs, where 4 percent of title IV, HEA enrollment is in programs with zero or negative earnings premiums and 2 percent are in programs with unsustainable debt levels.

Researchers have found that while providing information alone can be important and consequential in some settings, barriers to information and a lack of support for interpreting and acting upon information can limit its impact on students' education choices, particularly among more vulnerable populations.[34] We are also concerned about evidence from Federal and State investigations and qui tam lawsuits indicating that a number of institutions offering GE programs engage in aggressive and deceptive marketing and recruiting practices. As a result of these practices, prospective students and their families are potentially being pressured and misled into critical decisions regarding their educational investments that are against their interests.

We therefore propose an additional level of protection for GE programs that disproportionately leave students with unsustainable debt levels or no gain in earnings. We accordingly include an accountability framework in subpart S that links debt and earnings outcomes to GE program eligibility for title IV, HEA student aid programs. Since these programs are intended to prepare students for gainful employment in recognized occupations, tying eligibility to a minimally acceptable level of financial value is natural and supported by the relevant statutes; and as detailed above and in the RIA, these programs account for a disproportionate share of students who complete programs with very low earnings and unmanageable debt. This approach has been supported by a number of researchers who have recently suggested reinstating the 2014 GE rule with an added layer of accountability through a high school

[29] These figures use four-year cohorts to compute rates. The comparable share of programs with calculatable metrics using only the two-year cohorts is 19 and 15 percent for non-GE and GE programs, respectively.

[30] For an overview of research findings see, for example, *ticas.org/files/pub_files/consumer_information_in_higher_education.pdf.*

[31] Dominique J. Baker, Stephanie Riegg Cellini, Judith Scott-Clayton, and Lesley J. Turner, ''Why information alone is not enough to improve higher education outcomes,'' The Brookings Institution (2021). *www.brookings.edu/blog/brown-center-chalkboard/2021/12/14/why-information-alone-is-not-enough-to-improve-higher-education-outcomes/.*

[32] Mary Steffel, Dennis A. Kramer II, Walter McHugh, Nick Ducoff, ''Information disclosure and college choice,'' The Brookings Institution (2019). *www.brookings.edu/wp-content/uploads/2020/11/ES-11.23.20-Steffel-et-al-1.pdf.*

[33] A similar conclusion was reached in a recent study that found that about 670,000 students per year, comprising 9 percent of all students that exit postsecondary programs on an annual basis, attended programs that leave them worse off financially. See Jordan D. Matsudaira and Lesley J. Turner. ''Towards a framework for accountability for federal financial assistance programs in postsecondary education.'' The Brookings Institution. (2020) *www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner.pdf.*

[34] See discussion in section ''Outcome Differences Across Programs'' of the Regulatory Impact Analysis for an overview of these research findings.

earnings metric.[35] We further explain the debt-to-earnings (D/E) and earnings premium (EP) metrics in discussions above and below.

Consistent with our statutory authority, this proposed rule limits the linking of debt and earnings outcomes to program eligibility for programs that are defined as preparing students for gainful employment in a recognized occupation rather than a larger set of programs. The differentiation between GE and non-GE programs in the HEA reflects that eligible non-GE programs serve a broader array of goals beyond career training. Conditioning title IV, HEA eligibility for such programs to debt and earnings outcomes not only would raise questions of legal authority, it could increase the risk of unintended educational consequences. However, for purposes of program transparency, we propose to calculate and disclose debt and earnings outcomes for all programs along with other measures of the true costs of programs for students. Since students consider both GE and non-GE programs when selecting programs, providing comparable information for students would help them find the program that best meets their needs across any sector.

While we propose reinstating the consequential accountability provisions, including sanctions of eligibility loss, proposed in the 2011 and 2014 Prior Rules, we depart from those regulations in several ways in addition to those already mentioned above. First, we decided against using measures of loan repayment, like the one proposed in the 2011 Prior Rule. Even with an acceptable basis for setting such a threshold, we recognize that changes to the repayment options available to borrowers may cause repayment rates to change, and as a result such a measure may be an imperfect, or unstable, proxy for students' outcomes and program quality.

We also propose changes relative to the 2014 Prior Rule, including elimination of the ''zone'' and changes to appeals processes. Based on the Department's analyses and experience administering the 2014 Rule, these provisions added complexity and burden in administering the rule but did not further their stated goals and instead unnecessarily limited the Department's ability to remove low-value programs from eligibility. We further explain those choices below.[36]

Finally, the Department proposes to measure earnings using only the median of program completers' earnings, rather than the maximum of the mean or median of completers' earnings. This approach reflects an updated assessment that the median is a more appropriate measure, indicating the earnings level exceeded by a majority of the programs' graduates. The mean can be less representative of program quality since it may be elevated or lowered by just a few ''outlier'' completers with atypically high or low earnings outcomes. Furthermore, in aggregate National or State measures of earnings, mean earnings are always higher than median earnings due to the right skew of earnings distributions and the presence of a long right tail, when a small number of individuals earn substantially more than the typical person does.[37] As a result, using mean values, rather than medians, would substantially increase the state-level earnings thresholds derived from the earnings of high school graduates. Aggregated up to the State level, the mean earnings of those in the labor force with a high school degree is about 16 percent higher than the median earnings. By State, this difference between mean and median earnings ranges from 9 percent (in Delaware and Vermont) to 28 percent (in Louisiana).

The use of means as a comparison earnings measure within a State would set a much higher bar for programs, driven largely by the presence of high-earning outliers. In contrast, the use of mean earnings, rather than medians, for individual program data typically has a more muted effect. Using 2014 GE data, the typical increase from the use of mean, rather than median earnings, is about 3 percent across programs. Further, some programs have lower earnings when measured using a mean rather than median. Programs at the 25th percentile in earnings difference have a mean that is 3 percent less than the median, and programs at the 75th percentile have a mean than is 12 percent higher than the median. On balance, we believe that using median earnings for both the measure of program earnings and the earnings threshold measure used to calculate the earnings premium leads to a more representative comparison of earnings outcomes for program graduates.

Financial Responsibility (§§ 668.15, 668.23, 668.171, and 668.174 Through 668.177) (Section 498(c) of the HEA)

Section 498(c) of the HEA requires the Secretary to determine whether an institution has the financial responsibility to participate in the title IV, HEA programs on the basis of whether the institution is able to:

- Provide the services described in its official publications and statements;
- Provide the administrative resources necessary to comply with the requirements of the law; and
- Meet all of its financial obligations.

In 1994, the Department made significant changes to the regulations governing the evaluation of an institution's financial responsibility to improve our ability to implement the HEA's requirement. The Department strengthened the factors used to evaluate an institution's financial responsibility to reflect statutory changes made in the 1992 amendments to the HEA.

In 1997, we further enhanced the financial responsibility factors with the creation of part 668, subpart L that established a financial ratio requirement using composite scores and performance-based financial responsibility standards. The implementation of these new and enhanced factors limited the applicability of the previous factors in § 668.15 to only situations where an institution is undergoing a change in ownership.

These proposed regulations would remove the outdated regulations from § 668.15 and reserve that section. Proposed regulations in a new § 668.176, under subpart L, would be specific to institutions undergoing a change in ownership and detail the precise financial requirements for that process. Upon implementation, all financial responsibility factors for institutions, including institutions undergoing a change in ownership, would reside in part 668, subpart L.

In 2013, the Office of Management and Budget's Circular A–133, which governed independent audits of public and nonprofit, private institutions of higher education and postsecondary vocational institutions, was replaced with regulations at 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards. In § 668.23, we would replace all references to Circular A–133 with the current reference, 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

[35] Stephanie R. Cellini and Kathryn J. Blanchard, ''Using a High School Earnings Benchmark to Measure College Student Success Implications for Accountability and Equity.'' The Postsecondary Equity and Economics Research Project. (2022). *www.peerresearchproject.org/peer/research/body/2022.3.3-PEER_HSEarnings-Updated.pdf.*

[36] See the discussions below at [TK].

[37] Neal, Derek and Sherwin Rosen. (2000) Chapter 7: Theories of the distribution of earnings. Handbook of Income Distribution. Elsevier. Vol. 1. 379–427. *https://doi.org/10.1016/S1574-0056(00)80010-X.*

Audit guides developed by and available from the Department's Office of Inspector General contain the requirements for independent audits of for-profit institutions of higher education, foreign schools, and third-party servicers. Traditionally, these audits have had a submission deadline of six months following the end of the entity's fiscal year. These proposed regulations would establish a submission deadline that would be the earlier of two dates:

- Thirty days after the date of the later auditor's report with respect to the compliance audit and audited financial statements; or
- Six months after the last day of the entity's fiscal year.

The Department primarily monitors institutions' financial responsibility through the ''composite score'' calculation, a formula derived through a final rule published in 1997 that relies on audited financial statements and a series of tests of institutional performance. The composite score is only applied to private nonprofit and for-profit institutions. Public institutions are generally backed by the full faith and credit of the State or equivalent governmental entity and, if so, are not evaluated using the composite score test or required to post financial protection.

The composite score does not effectively account for some of the ways in which institutions' financial difficulties may manifest, however, because institutions submit audited financial statements after the end of an institution's fiscal year. An example of this would be when the person or entity that owns the school makes a short-term cash contribution to the school, thereby increasing the school's composite score in a way that allows what would have been a failing composite score to pass. We have seen examples of this activity occurring when that same owner withdraws the same or similar amount after the end of the fiscal year and after the calculation of a passing composite score based on the contribution. The effect is that the institution passes just long enough for the score to be reviewed and then goes back to failing. This is the type of manipulation that the proposed regulation seeks to address.

As part of the 2016 Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program regulations [38] (referred to collectively as the 2016 Final Borrower Defense Regulations), the Department introduced, as part of the financial responsibility framework, ''triggering events'' to serve as indicators of an institution's lack of financial responsibility or the presence of financial instability. These triggers were used in conjunction with the composite score and already existing standards of financial responsibility and offset the limits inherent in the composite score calculation. Some of the existing standards include that:

- The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5;
- The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds;
- The institution is able to meet all of its financial obligations and otherwise provide the administrative resources required to comply with title IV, HEA program requirements; and
- The institution or persons affiliated with the institution are not subject to a condition of past performance as outlined in 34 CFR 668.174.

The triggering events introduced in the 2016 Final Borrower Defense Regulations were divided into two categories: mandatory and discretionary.

Some required an institution to post a letter of credit or provide other financial protection when that triggering event occurred. This type of mandatory trigger included when an institution failed to demonstrate that at least 10 percent of its revenue derived from sources other than the title IV, HEA program funds (the 90/10 rule). Other mandatory triggers required a recalculation of the institution's composite score, which would result in a request for financial protection only if the newly calculated score was less than 1.0. An example of the latter type of trigger was when an institution's recalculated composite score was less than 1.0 due to its being required to pay any debt or incur any liability arising from a final judgment in a judicial proceeding or from an administrative proceeding or determination, or from a settlement.

The 2016 Final Borrower Defense Regulations also introduced discretionary triggers that only required financial protection from the institution if the Department determined it was necessary. An example of such a trigger was if an institution had been cited by a State licensing or authorizing agency for failing that entity's requirements. In that case, the Department could require financial protection if it believed that the failure was reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution.

In 2019, as part of the Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program [39] (2019 Final Borrower Defense Regulations) the Department revised many of these triggers, moving some from being mandatory to being discretionary; eliminating some altogether; and linking some triggers to post-appeal or final events. An example of a mandatory 2016 trigger that was removed entirely in 2019 was when an institution's recalculated composite score was less than 1.0 due to its being sued by an entity other than a Federal or State authority for financial relief on claims related to the making of Direct Loans for enrollment at the institution or the provision of educational services. In amending the financial responsibility requirements in the 2019 Final Borrower Defense Regulations, the Department reasoned that it was removing triggers that were speculative, such as triggers based on the estimated dollar value of a pending lawsuit, and limiting triggers to events that were known and quantified, such as triggers based on the actual liabilities incurred from a defense to repayment discharge. The rationale for the 2019 Final Borrower Defense Regulations was also based on the idea that some of the 2016 triggers were not indicators of the institution's actual financial condition or ability to operate. However, after implementing the financial responsibility changes from the 2019 Final Borrower Defense Regulations, the Department has repeatedly encountered institutions that appeared to be at significant risk of closure where we lacked the ability to request financial protection due to the more limited nature of the triggers. To address this fact, these proposed regulations would reinstate or expand mandatory and discretionary triggering events that would require an institution to post financial protection, usually in the form of a letter of credit. Discretionary triggers would provide the Department flexibility on whether to require a letter of credit based on the financial impact the triggering event has on the institution, while the specified mandatory triggering conditions would either automatically require the institution to obtain financial surety or require that the composite score be recalculated to determine if an institution would have to provide surety because it no longer passes. These proposed new triggers would increase

[38] 81 FR 75926.

[39] 84 FR 49788.

the Department's ability to monitor institutions for issues that may negatively impact their financial responsibility and to better protect students and taxpayers in cases of institutional misconduct and closure.

Administrative Capability (§ 668.16)

Under section 487(c)(1)(B) of the HEA, the Secretary is authorized to issue regulations necessary to provide reasonable standards of financial responsibility, and appropriate institutional administrative capability to administer the title IV, HEA programs, in matters not governed by specific program provisions, including any matter the Secretary deems necessary to the administration of the financial aid programs. Section 668.16 specifies the standards that institutions must meet in administering title IV, HEA funds to demonstrate that they are administratively capable of providing the education they promise and of properly managing the title IV, HEA programs. In addition to having a well-organized financial aid office staffed by qualified personnel, a school must ensure that its administrative procedures include an adequate system of internal checks and balances. The Secretary's administrative capability regulations protect students and taxpayers by requiring that institutions have proper procedures and adequate administrative resources in place to ensure fair, legal, and appropriate conduct by title IV, HEA participating schools. These procedures are required to ensure that students are treated in a fair and transparent manner, such as receiving accurate and complete information about financial aid and other institutional features and receiving adequate services to support a high-quality education. A finding that an institution is not administratively capable does not necessarily result in immediate loss of access to title IV aid. A finding of a lack of administrative capability generally results in the Department taking additional proactive monitoring steps, such as placing the institution on a provisional PPA or HCM2 as necessary.

Through program reviews, the Department has identified administrative capability issues that are not adequately addressed by the existing regulations. The Department proposes to amend § 668.16 to clarify the characteristics of institutions that are administratively capable. The proposed changes would benefit students in several ways.

First, we propose to improve the information that institutions provide to applicants and students to understand the cost of the education being offered. Specifically, we propose to require institutions to provide students financial aid counseling and information that includes the institution's cost of attendance, the source and type of aid offered, whether it must be earned or repaid, the net price, and deadlines for accepting, declining, or adjusting award amounts. We believe that these proposed changes would make it easier for students to compare costs of the schools that they are considering and understand the costs they are taking on to attend an institution.

Additionally, the Department proposes that institutions must provide students with adequate career services and clinical or externship opportunities, as applicable, to enable students to gain licensure and employment in the occupation for which they are prepared. We propose that institutions must provide adequate career services to create a pathway for students to obtain employment upon successful completion of their program. Institutions must have adequate career service staff and established partnerships with recruiters and employers. With respect to clinical and externship opportunities where required for completion of the program, we propose that accessible opportunities be provided to students within 45 days of completing other required coursework.

We also propose that institutions must disburse funds to students in a timely manner to enable students to cover institutional costs. This proposed change is designed to allow students to remain in school and reduce withdrawal rates caused by delayed disbursements.

The Department proposes that an institution that offers GE programs is not administratively capable if it derives more than half of its total title IV, HEA funds in the most recent fiscal year from GE programs that are failing. Similarly, an institution is not administratively capable if it enrolls more than half of its students who receive title IV, HEA aid in programs that are failing under the proposed GE metrics. Determining that these institutions are not administratively capable would allow the Department to take additional proactive monitoring steps for institutions that could be at risk of seeing significant shares of their enrollment or revenues associated with ineligible programs in the following year. This could include placing the institution on a provisional PPA or HCM2.

The Department also proposes to prohibit institutions from engaging in aggressive and deceptive recruitment and misrepresentations. These practices are defined in Part 668 Subpart F and Subpart R. The former was amended by the borrower defense regulations published on November 1, 2022 (87 FR 65904), while the latter was created in that regulation. Both provisions are scheduled to go into effect on July 1, 2023. The scope and definition of misrepresentations was first discussed during the 2009–2010 negotiated rulemaking session. We are now proposing to include aggressive and deceptive recruitment tactics or conduct as one of the types of activities that constitutes substantial misrepresentation by an eligible institution.

We propose that institutions must confirm that they have not been subject to negative action by a State or Federal agency and have not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution. Additionally, we propose that institutions certify when they sign their PPA that no principal or affiliate has been convicted of or pled nolo contender or guilty to a crime related to the acquisition, use, or expenditure of government funds or has been determined to have committed fraud or any other material violation of law involving those funds.

Finally, the Department proposes procedures that we believe would be adequate to verify the validity of a student's high school diploma. This standard was last addressed during negotiated rulemaking in 2010. In these proposed regulations, we identify specific documents that can be used to verify the validity of a high school diploma if the institution or the Secretary has reason to believe that the high school diploma is not valid. We also propose criteria to help institutions with identifying a high school diploma that is not valid.

Certification Procedures (§§ 668.2, 668.13, and 668.14)

Certification is the process by which a postsecondary institution applies to initially participate or continue participating in the title IV, HEA student aid programs. To receive certification, an institution must meet all applicable statutory and regulatory requirements in HEA section 498. Currently, postsecondary institutions use the Electronic Application for Approval to Participate in Federal Student Financial Aid Programs (E-App) to apply for designation as an eligible institution, initial participation, recertification, reinstatement, or change in ownership, or to update a current approval. Once an institution submits its application, we examine three major factors about the school—institutional eligibility, administrative capability, and financial responsibility.

Once an institution has demonstrated that it meets all institutional title IV eligibility criteria, it must enter into a PPA to award and disburse Federal student financial assistance. The PPA defines the terms and conditions that the institution must meet to begin and continue participation in the title IV programs. Institutions can be fully certified, provisionally certified, or temporarily certified under their PPAs. Full certification constitutes the standard level of oversight applied to an institution under which financial and compliance audits must be completed and institutions are generally subject to the same standard set of conditions.

Provisionally certified institutions are subject to more frequent oversight (*i.e.,* a shorter timeframe for certification), and have one or more conditions applied to their PPA depending on specific concerns about the school. For instance, we may require that an institution seek approval from the Department before adding new locations or programs. Institutions that are temporarily certified are subject to very short-term, month-to-month approvals and a variety of conditions to enable frequent oversight and reduce risk to students and taxpayers.

We notify institutions six months prior to the expiration of their PPA, and institutions must submit a materially complete application before the PPA expires. The Department certifies the eligibility of institutions for a period of time that may not exceed three years for provisional certification or six years for full certification. The Department may place conditions on the continued participation in the title IV, HEA programs for provisionally certified institutions.

As part of the 2020 final rule for Distance Education and Innovation,[40] the Department decided to automatically grant an institution renewal of certification if the Secretary did not grant or deny certification within 12 months of the expiration of its current period of participation. At the time, we believed this regulation would encourage prompt processing of applications, timely feedback to institutions, proper oversight of institutions, and speedier remedies of deficiencies. However, HEA section 498 does not specify a time period in which certification applications need to be approved, and we have since determined that the time constraint established in the final rule for Distance Education and Innovation negatively impacted our ability to protect program integrity. Furthermore, a premature decision to grant or deny an application when unresolved issues remain under review creates substantial negative consequences for students, institutions, taxpayers, and the Department. Accordingly, we propose to eliminate the provision that automatically grants an institution renewal of certification after 12 months without a decision from the Department. Eliminating this provision would allow us to take additional time to investigate institutions thoroughly prior to deciding whether to grant or deny a certification application and ensure institutions are approved only when we have determined that they are in compliance with Federal rules.

Our proposed changes to the certification process would better address conditions that create significant risk for students and taxpayers, such as institutions that falsely certify students' eligibility to receive a loan and subsequently close. Students expect their programs to be properly certified and for their institutions to continue operating through the completion of their programs and beyond. In fact, the value of an educational degree is heavily determined by the reputation of the issuer, thus when institutions mislead students about their certification status, students may invest their money and time in a program that they will not be able to complete, which ultimately creates financial risk for students and taxpayers.

Our proposed changes would also address institutions undergoing changes in ownership while being at risk of closure. We propose to add new events that would require institutions to be provisionally certified and add several conditions to provisional PPAs to increase oversight to better protect students. For example, we propose that institutions that we determine to be at risk of closure must submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. This would ensure that the institution has an acceptable plan in place that allows students to continue their education in the event the institution closes.

We also propose that, as part of the institution's PPA, the institution must demonstrate that a program that prepares a student for gainful employment in a recognized occupation and requires programmatic accreditation or State licensure, meets the institution's home State or another qualifying State's programmatic and licensure requirements. Another State's requirements could only be used if the institution can document that a majority of students resided in that other State while enrolled in the program during the most recently completed award year or if a majority of students who completed the program in the most recently completed award year were employed in that State. In addition, if the other State is part of the same metropolitan statistical area[41] as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State, then that other State's programmatic and licensure requirements could also be used to demonstrate that the program prepares a student for gainful employment in a recognized occupation. For any programmatic and licensure requirements that come from a State other than the home State, the institution must provide documentation of that State meeting one of three aforementioned qualifying requirements and the documentation provided must be substantiated by the certified public accountant who prepares the institution's compliance audit report as required under § 668.23. In addition, we propose to require that institutions inform students about the States where programs do and do not meet programmatic and licensure requirements. The Department is proposing these regulations because we believe students deserve to have relevant information to make an informed decision about programs they are considering. We also believe programs funded in part by taxpayer dollars should meet the requirements for the occupation for which they prepare students as a safeguard of the financial investment in these programs.

Additionally, as discussed in the 2022 final rule on changes in ownership,[42] the Department has seen an increase in the number of institutions applying for changes in ownership and has determined that it is necessary to reevaluate the relevant policies to accommodate the increased complexity of changes in ownership arrangements and increased risk to students and to taxpayers that arises when institutions

[40] 85 FR 54742

[41] *Metropolitan statistical area* as defined by the U.S. Office of Management and Budget (OMB), *www.census.gov/programs-surveys/metro-micro.html.*

[42] 87 FR 65426.

do not provide adequate information to the Department. For example, approving a new owner who does not have the financial and other necessary resources to successfully operate the institution jeopardizes the education of students and increases the likelihood of closure. Consequently, we propose a more rigorous process for certifying institutions to help address this issue. Namely, we propose to mitigate the risk of institutions failing to meet Federal requirements and creating risky financial situations for students and taxpayers by applying preemptive conditions for initially certified nonprofit institutions and institutions that have undergone a change of ownership and seek to convert to nonprofit status. These preemptive conditions would help us monitor risks associated with some for-profit college conversions, such as the risk of improper benefit to the school owners and affiliated persons and entities. Examples of such benefits include having additional time to submit annual compliance audit and financial statements and avoiding the 90/10 requirements that for-profit colleges must comply with. Under these proposed regulations, we would monitor and review the institution's IRS correspondence and audited financial statements for improper benefit from the conversion to nonprofit status.

Lastly, we recognize that private entities may exercise control over proprietary and private, nonprofit institutions, and we propose to increase coverage of an institution's liabilities by holding these entities to the same standards and liabilities as the institution. For instance, owners of private, nonprofit universities and teaching hospitals may greatly influence the institution's operations and should be held liable for losses incurred by the institution.

Ability To Benefit (§§ 668.2, 668.32, 668.156, and 668.157)

Prior to 1991, students without a high school diploma or its equivalent were not eligible for title IV, HEA aid. In 1991, section 484(d) of the HEA was amended to allow students without a high school diploma or its recognized equivalent to become eligible for title IV, HEA aid if they could pass an independently administered examination approved by the Secretary (Pub. L. 102–26) (1991 amendments). These examinations were commonly referred to as ''ability to benefit tests'' or ''ATB tests.''

In 1992, Public Law 102–325 amended section 484(d) to provide students without a high school diploma or its recognized equivalent an additional alternative pathway to title IV, HEA aid eligibility through a State-defined process (1992 amendments). The State could prescribe a process by which a student who did not have a high school diploma or its recognized equivalent could establish eligibility for title IV, HEA aid. The Department required States to apply to the Secretary for approval of such processes. Unless the Secretary disapproved a State's proposed process within six months after the submission to the Secretary for approval, the process was deemed to be approved. In determining whether to approve such a process, the HEA requires the Secretary to consider its effectiveness in enabling students without a high school diploma or its equivalent to benefit from the instruction offered by institutions utilizing the process. The Secretary must also consider the cultural diversity, economic circumstances, and educational preparation of the populations served by such institutions.

In 1995, the Department published final regulations [43] to implement the changes made to section 484(d). Under the final rule, in § 668.156, the Department would approve State processes if (1) the institutions participating in the State process provided services to students, including counseling and tutoring, (2) the State monitored participating institutions, which included requiring corrective action for deficient institutions and termination for refusal to comply, and (3) the success rate of students admitted under the State process was within 95 percent of the success rates of high school graduates who were enrolled in the same educational programs at the institutions that participated in the State process.

In 2008, Public Law 110–315 (2008 amendments) further amended section 484(d) of the HEA to allow students without a high school diploma or its recognized equivalent a third alternative pathway to title IV, HEA aid eligibility: satisfactory completion of six credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the institution of higher education.

In 2011, the Consolidated Appropriations Act of 2012 (Pub. L. 112–74) (2011 amendments) further amended section 484(d) by repealing the ATB alternatives created by the 1991, 1992, and 2008 amendments. Notably, Congress stipulated that the amendment only applied ''to students who first enroll in a program of study on or after July 1, 2012.''

In 2014, Public Law 113–235 amended section 484(d) (2014 amendments) to create three ATB alternatives, effectively restoring significant elements of the alternatives that were in the statute prior to the enactment of the 2011 amendments, using substantially identical text. However, the 2014 amendments made a significant change to the ATB processes in that they required students to be enrolled in eligible career pathway programs, in contrast to the pre-2011 statutory framework which permitted students to enroll in any eligible program.

In 2015, Public Law 114–113 amended the definition of an ''eligible career pathway program'' in section 484(d) to match the definition in Public Law 113–128, the Workforce Innovation and Opportunity Act (2015 amendments). Specifically, the 2015 amendments defined the term ''eligible career pathway program'' as a program that combines rigorous and high-quality education, training, and other services and that:

- Aligns with the skill needs of industries in the economy of the State or regional economy involved;
- Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*);
- Includes counseling to support an individual in achieving the individual's education and career goals;
- Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
- Organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;
- Enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and
- Helps an individual enter or advance within a specific occupation or occupational cluster.

The Department proposes to amend §§ 668.2, 668.32, 668.156, and 668.157. These proposed changes would amend the requirements for approval of a State process and establish a regulatory

[43] 60 FR 61830.

definition of ''eligible career pathway programs.''

As discussed, fulfilling one of the three ATB alternatives grants a student without a high school diploma or its recognized equivalent access to title IV, HEA aid for enrollment in an eligible career pathway program. Although the Department released Dear Colleague Letters GEN 15–09 (May 15, 2015) [44] and GEN 16–09 (May 9, 2016) [45] explaining the statutory changes, the current ATB regulations do not reflect the 2014 amendments to the HEA that require a student to enroll in an eligible career pathway program in addition to fulfilling one of the ATB alternatives. We are now proposing to codify those changes in regulation.

Specifically, we propose to: (1) add a definition of ''eligible career pathway program''; (2) make technical updates to student eligibility; (3) amend the State process to allow for time to collect outcomes data while establishing new safeguards against inadequate State processes; (4) establish documentation requirements for institutions that wish to begin or maintain title IV, HEA eligible career pathway programs; and (5) establish a verification process for career pathway programs to ensure regulatory compliance.

Reliance Interests

Given that the Department proposes to adopt rules that are significantly different from the current rules, we have considered whether those current rules, including the 2019 Prior Rule, engendered serious reliance interests that must be accounted for in this rulemaking. For a number of reasons, we do not believe that such reliance interests exist or, if they do exist, that they would justify changes to the proposed rules.

First of all, the Department's prior regulatory actions would not have encouraged reasonable reliance on any particular regulatory position. The 2019 Prior Rule was written to rescind the 2014 Prior Rule at a point where no gainful employment program had lost eligibility due to failing outcome measures. Furthermore, as various circumstances have changed, in law and otherwise, and as more information and further analyses have emerged, the Department's position and rules have changed since the 2011 Prior Rule. With respect to the proposed regulations in this NPRM, the Department provided notice of its intent to regulate on December 8, 2021. As the proposed regulations would not be effective before July 1, 2024, we believe institutions will have had sufficient time to take any internal actions necessary to comply with the final regulations.

Even if relevant actors might have relied on some prior regulatory position despite this background, the extent of alleged reliance would have to be supported by some kind of evidence. The Department aims to ensure that any asserted reliance interests are real and demonstrable rather than theoretical and speculative. Furthermore, to affect decisions about the rules, reliance interests must be added to a broader analysis that accords with existing statutes. Legitimate and demonstrable reliance interests, to the extent they exist, should be considered as one factor among a number of counter-balancing considerations, within applicable law and consistent with sound policy. We do not view any plausible reliance interests as nearly strong enough to alter our proposals in this NPRM.

In any event, the Department welcomes public comment on whether there are serious, reasonable, legitimate, and demonstrable reliance interests that the Department should account for in the final rule.

Public Participation

The Department has significantly engaged the public in developing this NPRM, including through review of oral and written comments submitted by the public during five public hearings. During each negotiated rulemaking session, we provided opportunities for public comment at the end of each day. Additionally, during each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

On May 26, 2021, the Department published a notice in the ≤**Federal Register** (86 FR 28299) announcing our intent to establish multiple negotiated rulemaking committees to prepare proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans.

The Department proposed regulatory provisions for the Institutional and Programmatic Eligibility Committee (Committee) based on advice and recommendations submitted by individuals and organizations in testimony at three virtual public hearings held by the Department on June 21 and June 23–24, 2021.

The Department also accepted written comments on possible regulatory provisions that were submitted to the Department by interested parties and organizations as part of the public hearing process. You may view the written comments submitted in response to the May 26, 2021, and the October 4, 2021, ≤**Federal Register** notices on the Federal eRulemaking Portal at *www.regulations.gov*, within docket ID ED–2021–OPE–0077. Instructions for finding comments are also available on the site under ''FAQ.''

You may view transcripts of the public hearings at *www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html*.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Department, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the ≤**Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of proposed regulations on which the negotiators reached consensus—unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. You can find further information on the negotiated rulemaking process at: *www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html*.

On December 8, 2021, the Department published a notice in the ≤**Federal Register** (86 FR 69607) announcing its intention to establish a Committee, the Institutional and Programmatic Eligibility Committee, to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee meetings and requested nominations for individual negotiators to serve on the negotiating Committee and announced the topics that Committee would address.

The Committee included the following members, representing their respective constituencies:

- *Accrediting Agencies:* Jamienne S. Studley, WASC Senior College and

[44] *fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2015-05-22/gen-15-09-subject-title-iv-eligibility-students-without-valid-high-school-diploma-who-are-enrolled-eligible-career-pathway-programs*.

[45] *fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2016-05-09/gen-16-09-subject-changes-title-iv-eligibility-students-without-valid-high-school-diploma-who-are-enrolled-eligible-career-pathway-programs*.

University Commission, and Laura Rasar King (alternate), Council on Education for Public Health.

- *Civil Rights Organizations:* Amanda Martinez, UnidosUS.
- *Consumer Advocacy Organizations:* Carolyn Fast, The Century Foundation, and Jaylon Herbin (alternate), Center for Responsible Lending.
- *Financial Aid Administrators at Postsecondary Institutions:* Samantha Veeder, University of Rochester, and David Peterson (alternate), University of Cincinnati.
- *Four-Year Public Institutions of Higher Education:* Marvin Smith, University of California, Los Angeles, and Deborah Stanley (alternate), Bowie State University.
- *Legal Assistance Organizations that Represent Students and/or Borrowers:* Johnson Tyler, Brooklyn Legal Services, and Jessica Ranucci (alternate), New York Legal Assistance Group.
- *Minority-Serving Institutions:* Beverly Hogan, Tougaloo College (retired), and Ashley Schofield (alternate), Claflin University.
- *Private, Nonprofit Institutions of Higher Education:* Kelli Perry, Rensselaer Polytechnic Institute, and Emmanual A. Guillory (alternate), National Association of Independent Colleges and Universities (NAICU).
- *Proprietary Institutions of Higher Education:* Bradley Adams, South College, and Michael Lanouette (alternate), Aviation Institute of Maintenance/Centura College/Tidewater Tech.
- *State Attorneys General:* Adam Welle, Minnesota Attorney General's Office, and Yael Shavit (alternate), Office of the Massachusetts Attorney General.
- *State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators of Institutions of Higher Education and/or Loan Servicers:* Debbie Cochrane, California Bureau of Private Postsecondary Education, and David Socolow (alternate), New Jersey's Higher Education Student Assistance Authority (HESAA).
- *Students and Student Loan Borrowers:* Ernest Ezeugo, Young Invincibles, and Carney King (alternate), California State Senate.
- *Two-Year Public Institutions of Higher Education:* Anne Kress, Northern Virginia Community College, and William S. Durden (alternate), Washington State Board for Community and Technical Colleges.
- *U.S. Military Service Members, Veterans, or Groups Representing them:* Travis Horr, Iraq and Afghanistan Veterans of America, and Barmak Nassirian (alternate), Veterans Education Success.
- *Federal Negotiator:* Gregory Martin, U.S. Department of Education.

The Department also invited nominations for two advisors. These advisors were not voting members of the Committee; however, they were consulted and served as a resource. The advisors were:

- David McClintock, McClintock & Associates, P.C. for issues with auditing institutions that participate in the title IV, HEA programs.
- Adam Looney, David Eccles School of Business at the University of Utah, for issues related to economics, as well as research, accountability, and/or analysis of higher education data.

The Committee met for three rounds of negotiations, the first of which was held over four days, while the remaining two were five days each. At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any member of the Committee and noted that consensus checks would be taken issue by issue. During its first week of sessions, the legal aid negotiator petitioned the Committee to add a Committee member representing the civil rights constituency to distinguish that constituency from the legal aid constituency. The Committee subsequently reached consensus on adding a member from the constituency group, Civil Rights Organizations.

The Committee reviewed and discussed the Department's drafts of regulatory language, as well as alternative language and suggestions proposed by Committee members. During each negotiated rulemaking session, we provided opportunities for public comment at the end of each day. Additionally, during each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

At the final meeting on March 18, 2022, the Committee reached consensus on the Department's proposed regulations on ATB. The Department has published the proposed ATB amendatory language without substantive alteration to the agreed-upon proposed regulations.

For more information on the negotiated rulemaking sessions please visit *www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

Summary of Proposed Changes

The proposed regulations would make the following changes to current regulations.

Financial Value Transparency and Gainful Employment (§§ 600.10, 600.21, 668.2, 668.43, 668.91, 668.401 Through 668.409, 668.601 Through 668.606) (Sections 101 and 102 of the HEA)

- Amend § 600.10(c) to require an institution seeking to establish the eligibility of a GE program to add the program to its application.
- Amend § 600.21(a) to require an institution to notify the Secretary within 10 days of any change to the information included in the GE program's certification.
- Amend § 668.2 to define certain terminology used in subparts Q and S, including "annual debt-to-earnings rate," "classification of instructional programs (CIP) code," "cohort period," "credential level," "debt-to-earnings rates (D/E rates)," "discretionary debt-to-earnings rates," "earnings premium," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," "gainful employment program (GE program)," "institutional grants and scholarships," "length of the program," "poverty guideline," "prospective student," "student," and "Title IV loan."
- Amend § 668.43 to establish a Department website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide the information required to access the website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.
- Amend § 668.91(a) to require that a hearing official must terminate the eligibility of a GE program that fails to meet the GE metrics, unless the hearing official concludes that the Secretary erred in the calculation.
- Add a new § 668.401 to provide the scope and purpose of newly established financial value transparency regulations under subpart Q.
- Add a new § 668.402 to provide a framework for the Secretary to determine whether a GE program or eligible non-GE program leads to acceptable debt and earnings results, including establishing annual and discretionary D/E rate metrics and associated outcomes, and establishing an earnings premium metric and associated outcomes.
- Add a new § 668.403 to establish a methodology to calculate annual and

discretionary D/E rates, including parameters to determine annual loan payments, annual earnings, loan debt, and assessed charges, as well as to provide exclusions and specify when D/E rates will not be calculated.

- Add a new § 668.404 to establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings threshold measure will not be calculated.
- Add a new § 668.405 to establish a process by which the Secretary will obtain the administrative and earnings data required to calculate the D/E rates and the earnings premium measure.
- Add a new § 668.406 to require the Secretary to notify institutions of their financial value transparency metrics and outcomes.
- Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.
- Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the timeframe for institutions to report this information.
- Add a new § 668.409 to establish severability protections ensuring that if any financial value transparency provision under subpart Q is held invalid, the remaining provisions continue to apply.
- Add a new § 668.601 to provide the scope and purpose of newly established GE regulations under subpart S.
- Add a new § 668.602 to establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.
- Add a new § 668.603 to define the conditions under which a failing GE program would lose title IV, HEA eligibility, to provide the opportunity for an institution to appeal a loss of eligibility only on the basis of a miscalculated D/E rate or earnings premium, and to establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.
- Add a new § 668.604 to require institutions to provide the Department with transitional certifications, as well as to certify when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution's recognized accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency.
- Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery requirements for such notifications, and to provide that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.
- Add a new § 668.606 to establish severability protections ensuring that if any GE provision under subpart S is held invalid, the remaining provisions would continue to apply.

Financial Responsibility (§§ 668.15, 668.23, 668.171, and 668.174 Through 668.177) (Section 498(c) of the HEA)

- Remove all regulations currently under § 668.15 and reserve that section.
- Amend § 668.23 to establish a new submission deadline for compliance audits and audited financial statements not subject to the Single Audit Act, Chapter 75 of title 31, United States Code, to be the earlier of 30 days after the date of the auditor's report, with respect to the compliance audit and audited financial statements, or 6 months after the last day of the entity's fiscal year.
- Replace all references to the ''Office of Management and Budget Circular A–133'' in § 668.23 with the updated reference, ''2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.''
- Amend § 668.23(d)(1) to require that financial statements submitted to the Department must match the fiscal year end of the entity's annual return(s) filed with the Internal Revenue Service.
- Add new language to § 668.23(d)(2)(ii) that would require a domestic or foreign institution that is owned directly or indirectly by any foreign entity to provide documentation stating its status under the law of the jurisdiction under which it is organized.
- Add new § 668.23(d)(5) that would require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.
- Amend § 668.171(b)(3)(i) so that an institution would be deemed unable to meet its financial or administrative obligations if, in addition to the already existing factors, it fails to pay title IV, HEA credit balances, as required.
- Further amend § 668.171(b)(3) to establish that an institution would not be able to meet its financial or administrative obligations if it fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days; or fails to satisfy payroll obligations in accordance with its published schedule; or it borrows funds from retirement plans or restricted funds without authorization.
- Amend § 668.171(c) to establish additional mandatory triggering events that would determine if an institution is able to meet its financial or administrative obligations. If any of the mandatory trigger events occur, the institution would be deemed unable to meet its financial or administrative obligations and the Department would obtain financial protection.
- Amend § 668.171(d) to establish additional discretionary triggering events that would assist the Department in determining if an institution is able to meet its financial or administrative obligations. If any of the discretionary triggering events occur, we would determine if the event is likely to have a material adverse effect on the financial condition of the institution, and if so, would obtain financial protection.
- Amend § 668.171(e) to recognize the liability or liabilities as an expense when recalculating an institution's composite score after a withdrawal of equity.
- Amend § 668.171(f) to require an institution to notify the Department, typically no later than 10 days, after any of the following occurs:
  - The institution incurs a liability as described in proposed § 668.171(c)(2)(i)(A);
  - The institution is served with a complaint linked to a lawsuit as described in § 668.171(c)(2)(i)(B) and an updated notice when such a lawsuit has been pending for at least 120 days;
  - The institution receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any government entity;
  - As described in proposed § 668.171(c)(2)(x), the institution makes a contribution in the last quarter of its fiscal year and makes a distribution in the first or second quarter of the following fiscal year;
  - As described in proposed § 668.171(c)(2)(vi) or (d)(11), the U.S Securities and Exchange Commission (SEC) or an exchange where the entity's

securities are listed takes certain disciplinary actions against the entity;

▪ As described in proposed § 668.171(c)(2)(iv), (c)(2)(v), or (d)(9), the institution's accrediting agency or a State, Federal or other oversight agency notifies it of certain actions being initiated or certain requirements being imposed;

▪ As described in proposed § 668.171(c)(2)(xi), there are actions initiated by a creditor of the institution;

▪ A proprietary institution, for its most recent fiscal year, does not receive at least 10 percent of its revenue from sources other than Federal educational assistance programs as provided in § 668.28(c)(3) (This notification deadline would be 45 days after the end of the institution's fiscal year);

▪ As described in proposed § 668.171(c)(2)(ix) or (d)(10), the institution or one of its programs loses eligibility for another Federal educational assistance program;

▪ As described in proposed § 668.171(d)(7), the institution discontinues an academic program;

▪ The institution fails to meet any one of the standards in § 668.171(b);

▪ As described in proposed § 668.171(c)(2)(xii), the institution makes a declaration of financial exigency to a Federal, State, Tribal, or foreign governmental agency or its accrediting agency;

▪ As described in proposed § 668.171(c)(2)(xiii), the institution or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, is voluntarily placed, or is required to be placed, into receivership;

▪ The institution is cited by another Federal agency for not complying with requirements associated with that agency's educational assistance programs and which could result in the institution's loss of those Federal education assistance funds;

▪ The institution closes more than 50 percent of its locations or any number of locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2;

▪ As described in proposed § 668.171(d)(2), the institution suffers other defaults, delinquencies, or creditor events;

• Amend § 668.171(g) to require public institutions to provide documentation from a government entity that confirms that the institution is a public institution and is backed by the full faith and credit of that government entity to be considered as financially responsible.

• Amend § 668.171(h) to provide that an institution is not financially responsible if the institution's audited financial statements include an opinion expressed by the auditor that was adverse, qualified, disclaimed, or if they include a disclosure about the institution's diminished liquidity, ability to continue operations, or ability to continue as a going concern.

• Amend § 668.174(a) to clarify that an institution would not be financially responsible if it has had an audit finding in either of its two most recent compliance audits that resulted in the institution being required to repay an amount greater than 5 percent of the funds the institution received under the title IV, HEA programs or if we require it to repay an amount greater than 5 percent of its title IV, HEA program funds in a Department-issued Final Audit Determination Letter, Final Program Review Determination, or similar final document in the institution's current fiscal year or either of its preceding two fiscal years.

• Add § 668.174(b)(3) to state that an institution is not financially responsible if an owner who exercises substantial control, or the owner's spouse, has been in default on a Federal student loan, including parent PLUS loans, in the preceding five years unless certain conditions are met when the institution first applies to participate in Title IV, HEA programs, or when the institution undergoes a change in ownership.

• Amend § 668.175(c) to clarify that we would consider an institution that did not otherwise satisfy the regulatory standards of financial responsibility, or that had an audit opinion or disclosure about the institution's liquidity, ability to continue operations, or ability to continue as a going concern, to be financially responsible if it submits an irrevocable letter of credit to the Department in an amount we determine. Furthermore, the proposed regulation would clarify that if the institution's failure is due to any of the factors in § 668.171(b), it must remedy the issues that gave rise to the failure.

• Add § 668.176 to specify the financial responsibility standards for an institution undergoing a change in ownership. The proposed regulations would consolidate financial responsibility requirements in subpart L of part 668 and remove the requirements that currently reside in § 668.15.

• Add a new § 668.177 to contain the severability statement that currently resides in § 668.176.

Administrative Capability (§ 668.16) (Section 498(a) of the HEA)

• Amend § 668.16(h) to require institutions to provide adequate financial aid counseling and financial aid communications to enrolled students that advises students and families to accept the most beneficial types of financial assistance available to them and includes clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts.

• Amend § 668.16(k) to require that an institution not have any principal or affiliate that has been subject to specified negative actions, including being convicted of or pleading nolo contendere or guilty to a crime involving governmental funds.

• Add § 668.16(n) to require that the institution has not been subject to a significant negative action or a finding by a State or Federal agency, a court or an accrediting agency, where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive; and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.

• Amend § 668.16(p) to strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.

• Add § 668.16(q) to require that institutions provide adequate career services to eligible students who receive title IV, HEA program assistance.

• Add § 668.16(r) to require that an institution provide students with accessible clinical, or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation, within 45 days of the successful completion of other required coursework.

• Add § 668.16(s) to require that an institution disburse funds to students in a timely manner consistent with the students' needs.

• Add § 668.16(t) to require institutions that offer GE programs to meet program standards as outlined in regulation.

• Add § 668.16(u) to require that an institution does not engage in misrepresentations or aggressive recruitment.

Certification Procedures (§§ 668.2, 668.13, and 668.14) (Section 498 of the HEA)

- Amend § 668.2 to add a definition of ''metropolitan statistical area.''
- Amend § 668.13(b)(3) to eliminate the provision that requires the Department to approve participation for an institution if it has not acted on a certification application within 12 months so the Department can take additional time where it is needed.
- Amend § 668.13(c)(1) to include additional events that lead to provisional certification.
- Amend § 668.13(c)(2) to require provisionally certified schools that have major consumer protection issues to recertify after two years.
- Add a new § 668.13(e) to establish supplementary performance measures the Secretary may consider in determining whether to certify or condition the participation of the institution.
- Amend § 668.14(a)(3) to require an authorized representative of any entity with direct or indirect ownership of a proprietary or private nonprofit institution to sign a PPA.
- Amend § 668.14(b)(17) to provide that all Federal agencies and State attorneys general have the authority to share with each other and the Department any information pertaining to an institution's eligibility for participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law.
- Amend § 668.14(b)(18)(i) and (ii) to add to the list of reasons for which an institution or third-party servicer may not employ, or contract with, individuals or entities whose prior conduct calls into question the ability of the individual or entity to adhere to a fiduciary standard of conduct. We also propose to prohibit owners, officers, and employees of both institutions and third-party servicers from participating in the title IV, HEA programs if they have exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program requirement and is not making payments in accordance with an agreement to repay that liability.
- Amend § 668.14(b)(18)(i) and (ii) to add to the list of situations in which an institution may not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, ten-percent-or-higher equity owners, directors, officers, principals, executives, or contractors at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.
- Amend § 668.14(b)(26)(ii)(A) to limit the number of hours in a gainful employment program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency or the institution's accrediting agency.
- Amend § 668.14(b)(26)(ii)(B) as an exception to paragraph (A) that limits the number of hours in a gainful employment program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by another State if: the institution provides documentation, substantiated by the certified public accountant that prepares the institution's compliance audit report as required under § 668.23, that a majority of students resided in that other State while enrolled in the program during the most recently completed award year or that a majority of students who completed the program in the most recently completed award year were employed in that State; or if the other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State.
- Amend § 668.14(b)(32) to require all programs that prepare students for occupations requiring programmatic accreditation or State licensure to meet those requirements and comply with all State consumer protection laws.
- Amend § 668.14(b)(33) to require institutions to not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution's administration of the title IV, HEA programs, returns of funds under the Return of Title IV Funds process, or any fraud or misconduct by the institution or its personnel.
- Amend § 668.14(b)(34) to prohibit institutions from maintaining policies and procedures to encourage, or conditioning institutional aid or other student benefits in a manner that induces, a student to limit the amount of Federal student aid, including Federal loan funds, that the student receives, except that the institution may provide a scholarship on the condition that a student forego borrowing if the amount of the scholarship provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.
- Amend § 668.14(e) to establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions.
- Amend § 668.14(f) to establish conditions that may apply to institutions that undergo a change in ownership seeking to convert from a for-profit institution to a nonprofit institution.
- Amend § 668.14(g) to establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.

ATB (§§ 668.2, 668.32, 668.156, and 668.157 (Section 484(d) of the HEA)

- Amend § 668.2 to codify a definition of ''eligible career pathway program.''
- Amend § 668.32(e) to differentiate between the title IV, HEA aid eligibility of non-high school graduates who enrolled in an eligible program prior to July 1, 2012, and those that enrolled after July 1, 2012.
- Amend § 668.156(b) to separate the State process into an initial two-year period and a subsequent period for which the State may be approved for up to five years.
- Amend § 668.156(a) to strengthen the Approved State process regulations to require that: (1) The application contains a certification that each eligible career pathway program intended for use through the State process meets the proposed definition of an ''eligible career pathway program''; (2) The application describes the criteria used to determine student eligibility for participation in the State process; (3) The withdrawal rate for a postsecondary institution listed for the first time on a State's application does not exceed 33 percent; (4) Upon initial application the Secretary will verify that a sample of the proposed eligible career pathway programs are valid; and (5) Upon initial application the State will enroll no more than the greater of 25 students or one percent of enrollment at each participating institution.
- Remove current § 668.156(c) to remove the support services requirements from the State process—orientation, assessment of a student's existing capabilities, tutoring, assistance in developing educational goals,

counseling, and follow up by teachers and counselors—as these support services generally duplicate the requirements in the proposed definition of ''eligible career pathway programs.''

- Amend the monitoring requirement in current § 668.156(d), now redesignated proposed § 668.156(c) to provide a participating institution that has failed to achieve the 85 percent success rate up to three years to achieve compliance.
- Amend current § 668.156(d), now redesignated proposed § 668.156(c) to require that an institution be prohibited from participating in the State process for title IV, HEA purposes for at least five years if the State terminates its participation.
- Amend current § 668.156(b), now redesignated proposed § 668.156(e) to clarify that the State is not subject to the success rate requirement at the time of the initial application but is subject to the requirement for the subsequent period, reduce the required success rate from the current 95 percent to 85 percent, and specify that the success rate be calculated for each participating institution. Also, amend the comparison groups to include the concept of ''eligible career pathway programs.''
- Amend current § 668.156(b), now redesignated proposed § 668.156(e) to require that States report information on race, gender, age, economic circumstances, and education attainment and permit the Secretary to publish a notice in the **Federal Register** with additional information that the Department may require States to submit.
- Amend current § 668.156(g), now redesignated proposed § 668.156(j) to update the Secretary's ability to revise or terminate a State's participation in the State process by (1) providing the Secretary the ability to approve the State process once for a two-year period if the State is not in compliance with a provision of the regulations and (2) allowing the Secretary to lower the success rate to 75 percent if 50 percent of the participating institutions across the State do not meet the 85 percent success rate.
- Add a new § 668.157 to clarify the documentation requirements for eligible career pathway programs.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Financial Value Transparency and Gainful Employment

Authority for This Regulatory Action: The Department's authority to pursue financial value transparency in GE programs and eligible non-GE programs and accountability in GE programs is derived primarily from three categories of statutory enactments: first, the Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV, HEA; second, authorizations and directives within title IV, HEA regarding the collection and dissemination of potentially useful information about higher education programs, as well as provisions regarding institutional eligibility to benefit from title IV; and third, the further provisions within title IV, HEA that address the limits and responsibilities of gainful employment programs.

As for crosscutting rulemaking authority, Section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.[46] This authority includes the power to promulgate regulations relating to programs that we administer, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, whether to pursue eligible non-GE programs or GE programs. Moreover, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations that the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.[47]

Moreover, Section 431 of GEPA grants the Secretary additional authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes, and also to inform the public about Federally supported education programs.[48] This provision lends additional support for the proposed reporting and disclosure requirements, which will enable the Department to collect data and information for the purpose of developing objective measures of program performance, not only for the Department's use in evaluating programs but also to inform the public—including enrolled students, prospective students, their families, institutions, and others—about relevant information related to those Federally-supported programs.

As for provisions within title IV, HEA, several of them address the effective delivery of information about higher education programs. In addition to older methods of information dissemination, for example, section 131 of the Higher Education Opportunity Act, as amended, and [49] taken together, several provisions declare that the Department's websites should include information regarding higher education programs, including college planning and student financial aid,[50] the cost of higher education in general, and the cost of attendance with respect to all institutions of higher education participating in title IV, HEA programs.[51] Those authorizations and directives expand on more traditional methods of delivering important information to students, prospective students, and others, including within or alongside application forms or promissory notes for which acknowledgments by signatories are typical and longstanding.[52] Educational institutions have been distributing information to students at the direction of the Department and in accord with the applicable statutes for decades.[53]

The proposed rules also are supported by the Department's statutory responsibilities to observe eligibility limits in the HEA. Section 498 of the HEA requires institutions to establish eligibility to provide title IV, HEA funds

[46] 20 U.S.C. 1221e–3.

[47] 20 U.S.C. 3474.

[48] 20 U.S.C. 1231a(2)–(3). The term ''applicable program'' means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. 20 U.S.C. 1221(c)(1).

[49] 20 U.S.C. 1015(a)(3), (b), (c)(5), (e), (h). See also section 111 of the Higher Education Opportunity Act (20 U.S.C. 1015a), which authorizes the College Navigator website and successor websites.

[50] *E.g.,* 20 U.S.C. 1015(e).

[51] 20 U.S.C. 1015(a)(3), (b), (c)(5), (e), (h). See also section 111 of the Higher Education Opportunity Act (20 U.S.C. 1015a), which authorizes the College Navigator website and successor websites.

[52] *E.g.,* 20 U.S.C. 1082(m), regarding common application forms and promissory notes or master promissory notes.

[53] A compilation of the current and previous editions of the *Federal Student Aid Handbook,* which includes detailed discussion of consumer information and school reporting and notification requirements, is posted at *https://fsapartners.ed.gov/knowledge-center/fsa-handbook.*

to their students. Eligible institutions must also meet program eligibility requirements for students in those programs to receive title IV, HEA assistance.

One type of program for which certain types of institutions must establish program-level eligibility is ''a program of training to prepare students for gainful employment in a recognized occupation.'' [54] [55] Section 481 of the HEA articulates this same requirement by defining, in part, an ''eligible program'' as a ''program of training to prepare students for gainful employment in a recognized profession.'' [56] The HEA does not more specifically define ''training to prepare,'' ''gainful employment,'' ''recognized occupation,'' or ''recognized profession'' for purposes of determining the eligibility of GE programs for participation in title IV, HEA. At the same time, the Secretary and the Department have a legal duty to interpret, implement, and apply those terms in order to observe the statutory eligibility limits in the HEA. In the section-by-section discussion below, we explain further the Department's interpretation of the GE statutory provisions and how those provisions should be implemented and applied.

The statutory eligibility limits for GE programs are one part of the foundation of authority for disclosures and/or warnings from institutions to prospective and enrolled GE students. In the GE setting, the Department has not only a statutory basis for pursuing the effective dissemination of information to students about a range of GE program attributes and performance metrics,[57] the Department also has authority to use certain metrics to determine that an institution's program is not eligible to benefit, as a GE program, from title IV, HEA assistance. When an institution's program is at risk of losing eligibility based on a given metric, there should be no real doubt that the Department may require the institution that operates the at-risk program to alert prospective and enrolled students that they may not be able to receive title IV, HEA assistance at the program in question. Without a direct communication from the institution to prospective and enrolled students, the students themselves risk losing the ability to make educational decisions with the benefit of critically relevant information about programs, contrary to the text, purpose, and traditional understandings of the relevant statutes.

The above authorities collectively empower the Secretary to promulgate regulations to (1) Require institutions to report information about GE programs and eligible non-GE programs to the Secretary; (2) Require institutions to provide disclosures or warnings to students regarding programs that do not meet financial value measures established by the Department; and (3) Define the gainful employment requirement in the HEA by establishing measures to determine the eligibility of GE programs for participation in title IV, HEA. Where helpful and appropriate, we will elaborate on the relevant statutory authority in our overviews and section-by-section discussions below.

Financial Value Transparency Scope and Purpose (§ 668.401)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add subpart Q, which would establish a financial value transparency framework for the Department to calculate measures of the financial value of eligible programs, categorize programs based on those measures as low-earning or high-debt-burden, provide information about the financial value of programs to students, and require, when applicable, acknowledgments from students who are enrolled—and prospective students who are seeking to enroll—in programs with high debt burdens. The proposed regulations would establish rules and procedures for institutions to report information to the Department and for the Department to calculate these measures. The regulations would apply to all educational programs that participate in the title IV, HEA programs except for approved prison education programs and comprehensive transition and postsecondary programs. Proposed § 668.401 would establish the scope and purpose of these financial value transparency regulations in subpart Q.

Reasons: The Department recognizes that with the high cost of attendance for postsecondary education and resulting need for high levels of student borrowing, students, families, institutions, and the public have a strong interest in ensuring that higher education investments are justified through their benefits to students and society.

Choosing whether and where to pursue a postsecondary education is one of the most important and consequential investments individuals make during their lifetimes. The considerations are not purely, or in many cases even primarily, financial in nature: an education requires time away from other pursuits, the possibility of increased family stress, and the hard work required to master new knowledge. Aside from the potential for improved career prospects and higher earnings, a college education has also been shown to improve health, life satisfaction, and civic engagement among other non-financial benefits.[58]

The financial consequences of the choice of whether and where to enroll in higher education, however, are substantial. In the 2020–21 award year, the average cost of attendance for first-time, full-time degree seeking undergraduate student across all 4-year institutions was $27,200, and the top 25 percent of students paid more than $44,800. According to NCES data, median total debt at graduation among students who borrow for degrees was around $23,000 for undergraduates competing in 2017–18 [59] and $67,000 for graduate students,[60] with the top 25 percent of students leaving school with more than $33,000 [61] and $118,000,[62] respectively. There is significant heterogeneity in debt outcomes and costs across programs, even among credentials at the same level and in the same field.

The typical college graduate enjoys substantial financial benefits in the form of increased earnings from their degree. Research has shown that the typical bachelor's degree recipient earns twice what a typical high school graduate earns over the course of their career.[63] But here too, there are enormous

[54] 20 U.S.C. 1001(b)(1).

[55] 20 U.S.C. 1002(b)(1)(A)(i), (c)(1)(A).

[56] 20 U.S.C. 1088(b).

[57] *Ass'n of Priv. Sector Colleges & Universities* v. *Duncan,* 110 F. Supp. 3d 176, 198–200 (D.D.C. 2015) (recognizing statutory authority to require institutions to disclose certain information about GE programs to prospective and enrolled GE students), *aff'd,* 640 F. App'x 5, 6 (D.C. Cir. 2016) (per curiam) (unpublished) (indicating that the plaintiff's challenge to the GE disclosure provisions was abandoned on appeal).

[58] Oreopoulos, P. & Salavanes, K. (2011). Priceless: The Nonpecuniary Benefits of Schooling. Journal of Economic Perspectives. 25(1) 159–84. Marken, S. (2021). Ensuring a More Equitable Future: Exploring the Relationship Between Wellbeing and Postsecondary Value. Post Secondary Value Commission. Ross, C. & Wu, C. (1995). The Links Between Education and Health. American Sociological Review. 60(5) 719–745. Cutler, D. & Lleras-Muney, A. (2008). Education and Health: Evaluating Theories and Evidence. In Making Americans Healthier: Social and Economic Policy as Health Policy. House, J. et al (Eds). Russel Sage Foundation. New York.

[59] *nces.ed.gov/datalab/powerstats/table/ugaxgt.*

[60] *Nces.ed.gov/datalab/powerstats/table/uuaklv.*

[61] *nces.ed.gov/datalab/powerstats/table/ugaxgt.*

[62] *Nces.ed.gov/datalab/powerstats/table/uuaklv.*

[63] Hershbein, B., and Kearney, M. (2014). Major Decisions: What Graduates Earn Over Their Lifetimes. The Hamilton Project. Brookings Institution. Washington, DC.

earnings differences across different credential levels and fields of study, and across similar programs at different institutions.[64] For example, measures of institutional productivity (assessed using wage and salary earnings, employment in the public or nonprofit sector, and innovation in terms of contributions to research and development) vary substantially within institutions of similar selectivity, especially among less-selective institutions.[65] Typical returns to enrollment vary widely across selected fields, even after accounting for individual student characteristics that may affect selection into a given major or pre-enrollment earnings. These differences are large and consequential over an individual's lifetime. For example, one study found that even after controlling for differences in the characteristics of enrolled students, students at four-year institutions in Texas who majored in high-earning fields earned $5,000 or more per quarter more than students who majored in the lowest earning field of study even 16 to 20 years after college.[66] Similarly, another study found that those who earned master's degrees in Ohio experienced earnings increases ranging from a 24 percent increase for degrees in high earning fields such as health to essentially no increase, relative to baseline earnings, for some lower-value fields.[67]

Surveys of current and prospective college students indicate that overwhelming majorities of students consider the financial outcomes of college as among the very most important reasons for pursuing a postsecondary credential. A national survey of college freshmen at baccalaureate institutions consistently finds students identifying ''to get a good job'' as the most common reason why students chose their college.[68] Another survey of a broader set of students found financial concerns dominate in the decision to go to college with the top three reasons identified being ''to improve my employment opportunities,'' ''to make more money,'' and ''to get a good job.''[69]

Great strides have been made in providing accurate and comparable information to students about their college options in the last decade. The College Scorecard, launched in 2015, provided information on the earnings and borrowing outcomes of students at nearly all institutions participating in the title IV, HEA aid programs. Recognizing the important variation in these outcomes across programs of study, even within the same institution, program-level information was added to the Scorecard in 2019. The dissemination of this information has dramatically improved the information available on the financial value of different programs, and enabled a new national conversation on whether, how, and for whom higher education institutions provide financial benefit.[70]

Still, the Department recognizes that merely posting the information on the College Scorecard website has had a limited impact on student choice. For example, one study[71] found the College Scorecard influenced the college search behavior of some higher income students but had little effect on lower income students. Similarly, a randomized controlled trial inviting high school students to examine program-level data on costs and earnings outcomes had little effect on students' college choices, possibly due to the fact that few students accessed the information outside of school-led sessions.[72]

It is critical to provide students and families access to information that is consistently calculated and presented across programs and institutions, especially for key metrics like program-level net price estimates. When institutions report net price to students, there can be substantial variation in how the prices are calculated,[73] and in how institutions characterize these values, making it difficult for prospective students to compare costs across programs and institutions.[74]

Applicants' use of data at key points during the college decision-making process has been a consistent challenge with other transparency-focused initiatives that the Department administers. Students can often receive information concerning their eligibility for financial aid that is inconsistent or difficult to compare.[75] The College Navigator also provides critical data on college pricing, completion rates, default rates, and other indicators, but there is little evidence that it affects college search processes or enrollment decisions. Similarly, we also administer lists of institutions with the highest prices and changes in price measured in a few ways, but there is no indication that the presence of such lists alters institutional or borrower behavior.[76]

A broader set of research has, however, illustrated that providing information on the financial value of college options can have meaningful impacts on college choices. The difference in effectiveness of information interventions has been studied extensively and informs our proposed approach to the financial transparency framework.[77] To affect

[64] Webber, D. (2016). Are college costs worth it? How ability, major, and debt affect the returns to schooling, Economics of Education Review, 53, 296–310.

[65] Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In Productivity in Higher Education, C. M. Hoxby and K. M. Stange(eds). University of Chicago Press: Chicago, 2019.

[66] Andrews, R.J., Imberman, S.A., Lovenheim, M.F. & Stange, K.M. (2022), ''The returns to college major choice: Average and distributional effects, career trajectories, and earnings variability,'' NBER Working Paper w30331.

[67] Heterogeneity in Labor Market Returns to Master's Degrees: Evidence from Ohio. (EdWorkingPaper: 22–629). Retrieved from Annenberg Institute at Brown University: *doi.org/10.26300/akgd-9911*.

[68] Stolzenberg, E. B., Aragon, M.C., Romo, E., Couch, V., McLennan, D., Eagan, M.K., Kang, N. (2020). ''The American Freshman: National Norms Fall 2019,'' Higher Education Research Institute at UCLA, *www.heri.ucla.edu/monographs/TheAmericanFreshman2019.pdf*.

[69] Rachel Fishman (2015), ''2015 College Decisions Survey: Part I Deciding To Go To College,'' New America, *static.newamerica.org/attachments/3248-deciding-to-go-to-college/CollegeDecisions_PartI.148dcab30a0e414ea2a52f0d8fb04e7b.pdf*.

[70] For example, the work of the Postsecondary Value Commission (*postsecondaryvalue.org/*), the Hamilton Project (*www.hamiltonproject.org/papers/major_decisions_what_graduates_earn_over_their_lifetimes*),and Georgetown University's Center on Education and the Workforce (*https://cew.georgetown.edu/*).

[71] Hurwitz, Michael, and Jonathan Smith. ''Student responsiveness to earnings data in the College Scorecard.'' Economic Inquiry 56, no. 2 (2018): 1220–1243. Also Huntington-Klein 2017. *nickchk.com/Huntington-Klein_2017_The_Search.pdf*.

[72] Blagg, Kristin, Matthew M. Chingos, Claire Graves, and Anna Nicotera. ''Rethinking consumer information in higher education.'' (2017) Urban Institute, Washington DC. *www.urban.org/research/publication/rethinking-consumer-information-higher-education*.

[73] Anthony, A., Page, L. and Seldin, A. (2016) In the Right Ballpark? Assessing the Accuracy of Net Price Calculators. Journal of Student Financial Aid. 46(2). 3.

[74] The Institute for College Access & Success (TICAS). (2012). Adding it All Up 2012: Are College Net Price Calculators Easy to Find, Use, and Compare? *ticas.org/files/pub_files/Adding_It_All_Up_2012.pdf*.

[75] Burd, S. et al. (2018) Decoding the Cost of College: The Case for Transparent Financial Aid Award Letters. New America. Washington, DC. *https://www.newamerica.org/education-policy/policy-papers/decoding-cost-college/*. Anthony, A., Page, L., & Seldin, A. (2016) In the Right Ballpark? Assessing the Accuracy of Net Price Calculators. Journal of Student Financial Aid. 46(2) 3. *https://files.eric.ed.gov/fulltext/EJ1109171.pdf*.

[76] Baker, D. J. (2020). ''Name and Shame'': An Effective Strategy for College Tuition Accountability? Educational Evaluation and Policy Analysis, 42(3), 393–416. *doi.org/10.3102/0162373720937672*.

[77] Steffel, M., Kramer, D., McHugh, W., & Ducoff, N. (2020). Informational Disclosure and College Choice. Brookings. Washington, DC *www.brookings.edu/research/information-disclosure-and-college-choice/*; Robertson, B. & Stein, B. (2019). Consumer Information in Higher

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college decision-making, information must be timely, personalized, and easy to understand.

The timing of when applicants receive information about institutions and programs is critical—data should be available at key points during the college search process and applicants should have sufficient time and resources to process new information. Informational interventions work best when they arrive at the right moment and are offered with additional guidance and support.[78] For example, unemployment insurance (UI) recipients who received letters informing them of Pell Grant availability and institutional support were 40 percent more likely to enroll in postsecondary education.[79] Families who received information about the FAFSA, as well as support in completing it while filing their taxes, were more likely to submit their aid applications, and students from these families were more likely to attend and persist in college.[80]

Informational interventions are most likely to sway choice when they are tailored to the applicant's personal context.[81] High school students who learn about their peers' admission experiences through an online college search platform tend to shift their college application and attendance choices.[82] Students who receive personalized outreach from colleges, particularly when outreach is paired with information about financial aid eligibility, are more likely to apply to and enroll in those institutions.[83]

Interventions are most effective when the content is salient and easy to understand. Students, particularly those who are enrolling for the first time, may need additional context for understanding student debt amounts and the feasibility of repayment.[84] Evidence that students defer attention to their student debt while enrolled[85] suggests that inclusion of typical post-graduate earnings data may be likely to engage students.[86] Finally, it is important that these data are consistently presented from a trusted source across institutions and programs.[87]

In keeping with the idea of presenting salient and easy-to-understand information, we propose categorization of acceptable levels of performance on two measures of financial value. This approach ensures that students have clear indication of when attending a program presents a significant risk of negative financial consequences. In particular, and reflecting the concerns noted above, we would categorize programs with low performance with the easy-to-understand labels of ''high debt-burden'' and ''low earnings,'' based on the debt and earnings measures used in the framework.

Research shows that receiving information from a trusted source, in a manner that is easy to compare across different programs and institutions, and in a timely fashion is important for disclosures to be effective. Moreover, we believe that actively distributing information to prospective students before the prospective student signs an enrollment agreement, registers, or makes a financial commitment to the institution increases the likelihood that they will view and act upon the information, compared to information that students would have to seek out on their own. Accordingly, we propose to provide disclosures through a website that the Department would administer and use to deliver information directly to students. Additionally, to ensure that students see this information before receiving federal aid for programs with potentially harmful financial consequences, we propose requiring acknowledgment of receipt for high-debt-burden programs before federal aid is disbursed.

We also seek to improve the information available to students and propose several refinements relative to information available on the College Scorecard, including debt measures that are inclusive of private and institutional loans (including income sharing agreements or loans covered by tuition payment plans), as well as measures of institutional, State, and private grant aid. This information would enable the calculation of both the net price to students as well as total amounts paid from all sources. We believe these improvements would better capture the program's costs to students, families, and taxpayers.

To calculate these measures, we would require new reporting from institutions, discussed below under proposed § 668.408.

As noted above, we propose that this transparency framework apply to (nearly) all programs at all institutions. In particular, disclosures of this information would be available for all programs, subject to privacy limitations. This is a departure from the 2014 Prior Rule, which only required disclosures for GE programs. Since students consider both GE and non-GE programs when selecting programs, providing comparable information for students

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Education. The Institute for College Access & Success (TICAS). *ticas.org/files/pub_files/consumer_information_in_higher_education.pdf*; Morgan, J. & Dechter, G. (2012). Improving the College Scorecard. Using Student Feedback to Create an Effective Disclosure. Center For American Progress, Washington, DC.

[78] Carrel, S. & Sacerdote, B. (2017). Why Do College-Going Interventions Work? American Economic Journal; Applied Economics. 1(3) 124–151.

[79] Barr, A. & Turner, S. (2018). A Letter and Encouragement: Does Information Increase Postsecondary Enrollment of UI Recipients? American Economic Journal: Economic Policy 2018, 10(3): 42–68. *doi.org/10.1257/pol.20160570*.

[80] Eric P. Bettinger, Bridget Terry Long, Philip Oreopoulos, Lisa Sanbonmatsu, The Role of Application Assistance and Information in College Decisions: Results from the H&R Block Fafsa Experiment, The Quarterly Journal of Economics. 127(3) 1205–1242. *doi.org/10.1093/qje/qjs017*.

[81] Goldstein, D.G., Johnson, E.J., Herrmann, A., Heitmann, M. (2008). Nudge your customers toward better choices. Harvard Business Review, 86(12). 99–105.

Johnson, E.J., Shu, S.B., Benedict G.C. Dellaert, Fox, C., Goldstein, D.G., Häubl, G., Larrick, R.P., Payne, J.W., Peters, E., Schkade, D., Wansink, B., & Weber, E.U. (2012). Beyond nudges: Tools of a choice architecture. Marketing Letters, 23(2), 487–504.

[82] Mulhern, C. (2021). Changing College Choices with Personalized Admissions Information at Scale: Evidence on Naviance. Journal of Labor Economics. 39(1) 219–262.

[83] Dynarski, S., Libassi, C., Michelmore, K. & Owen, S. (2021). Closing the Gap: The Effect of Reducing Complexity and Uncertainty in College Pricing on the Choices of Low-Income Students. American Economic Review, 111 (6): 1721–56.; Gurantz, O., Hurwitz, M. and Smith, J. (2017). College Enrollment and Completion Among Nationally Recognized High-Achieving Hispanic Students. J. Pol. Anal. Manage., 36: 126–153. *doi.org/10.1002/pam.21962*; Howell, J., Hurwitz, M. & Smith, J., The Impact of College Outreach on High Schoolers' College Choices—Results From Over 1,000 Natural Experiments (November 2020). *ssrn.com/abstract=3463241*.

[84] Boatman, A., Evans, B.J., & Soliz, A. (2017). Understanding Loan Aversion in Education: Evidence from High School Seniors, Community College Students, and Adults. AERA Open, 3(1). *doi.org/10.1177/2332858416683649*; Evans, B., Boatman, A. & Soliz, A. (2019). ''Framing and Labeling Effects in Preferences for Borrowing for College: An Experimental Analysis,'' Research in Higher Education, Springer; Association for Institutional Research, 60(4), 438–457.

[85] Darolia, R., & Harper, C. (2018). Information Use and Attention Deferment in College Student Loan Decisions: Evidence From a Debt Letter Experiment. Educational Evaluation and Policy Analysis, 40(1), 129–150. *doi.org/10.3102/0162373717734368*.

[86] Ruder, A. & Van Noy, M. (2017). Knowledge of earnings risk and major choice: Evidence from an information experiment, Economics of Education Review, 57, 80–90, *doi.org/10.1016/j.econedurev.2017.02.001*.; Baker, R., Bettinger, E., Jacob, B. & Marinescu, I. (2018). The Effect of Labor Market Information on Community College Students' Major Choice, Economics of Education Review, 65, 18–30, *doi.org/10.1016/j.econedurev.2018.05.005*.

[87] Previous informational interventions around net price, for example, were less consistent in the calculation of values, and in the presentation of net price calculation aids. Anthony, A., Page, L., & Seldin, A. (2016). In the Right Ballpark? Assessing the Accuracy of Net Price Calculators, Journal of Student Financial Aid. 46(2), 3. *publications.nasfaa.org/jsfa/vol46/iss2/3*;

The Institute For College Access & Success (TICAS). (2012) Adding it all up 2012: Are college net price calculators easy to find, use, and compare? *ticas.org/files/pub_files/Adding_It_All_Up_2012.pdf*.

would help them find the program that best meets their needs across any sector. In the proposed subpart S, we address the need for additional accountability measures for GE programs, including sanctions for programs determined to lead to high-debt-burden or low earnings under the metrics described in subpart Q of part 668.

Financial Value Transparency Framework (§ 668.402)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add new § 668.402 to establish a framework to measure two different aspects of the financial value of programs based on their debt and earnings outcomes, and to classify programs as ''low-earning'' or ''high-debt-burden'' for the purpose of providing informative disclosures to students.

D/E Rates

We would define a debt-to-earnings (D/E) metric to measure the debt burden faced by the typical graduate of a program by determining the share of their annual or discretionary income that would be required to make their student loan debt payments under fixed-term repayment plans. We categorize programs as ''high debt-burden'' if the typical graduate has a D/E rate that is above recognized standards for debt affordability.

In particular, a program would be classified as ''high debt-burden'' if its discretionary debt-to-earnings rate is greater than 20 percent and its annual debt-to-earnings rate is greater than 8 percent. If the denominator (median annual or discretionary earnings) of either rate is zero, then that rate is considered ''high-debt-burden'' only if the numerator (median debt payments) is positive.

If it is not possible to calculate or issue D/E rates for a program for an award year, the program would receive no D/E rates for that award year. The program would remain in the same status under the D/E rates measure as the previous award year.

Earnings Premium (EP)

In addition, we would establish an earnings premium measure to assess the degree to which program graduates out-earn individuals who did not enroll in postsecondary education. The measure would be calculated as the difference in the typical earnings of a program graduate relative to the typical earnings of individuals in the State where the program is located who have only a high school or equivalent credential.

We would categorize programs as ''low-earning'' if the median annual earnings of the students who complete the program, measured three years after completion, does not exceed the earnings threshold—that is, if the earnings premium is zero or negative. The earnings threshold for each program would be calculated as the median earnings of individuals with only a high school diploma or the equivalent, between the ages of 25 to 34, who are either employed or report being unemployed (*i.e.,* looking and available for work), located in the State in which the institution is located, or nationally if fewer than 50 percent of students in the program are located in the State where the institution is located while enrolled.

If it is not possible to calculate or publish the earnings premium measure for a program for an award year, the program would receive no result under the earnings premium measure for that award year and would remain in the same status under the earnings premium measure as the previous award year.

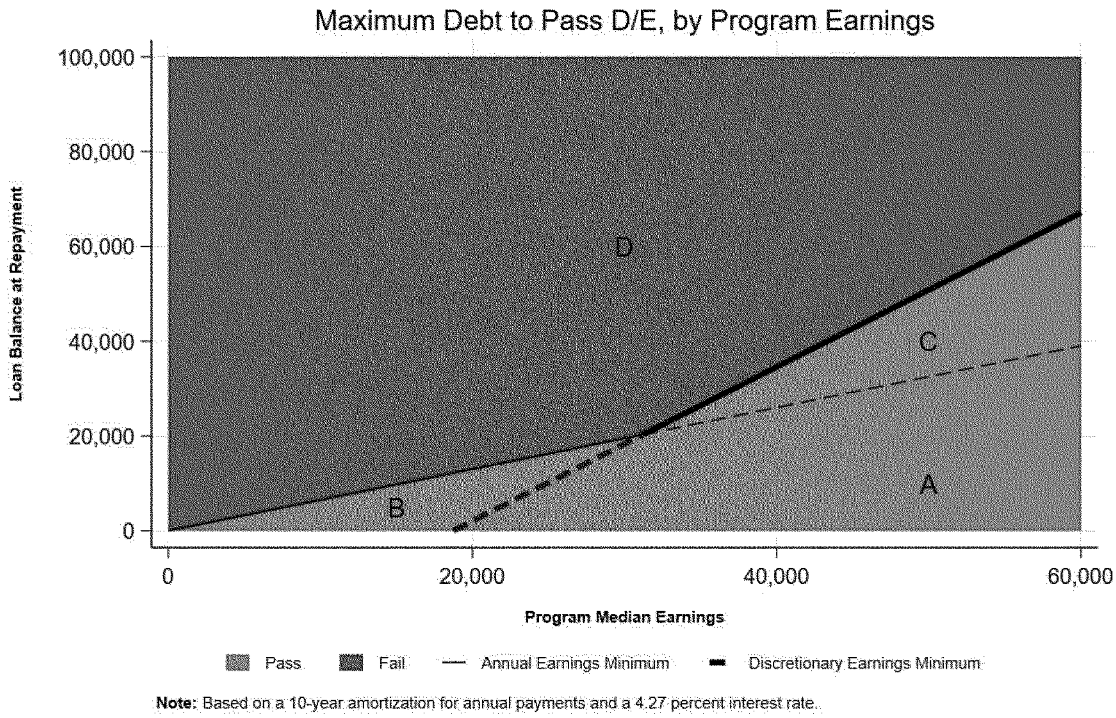
Proposed changes to § 668.43 would require institutions to distribute information to students, prior to enrollment, about how to access a disclosure website maintained by the Secretary. The disclosure website would provide information about the program. These items might include the typical earnings and debt levels of graduates; information to contextualize each measure including D/E and EP measures; information about the net yearly cost of attendance at the program and total costs paid by completing students; information about typical amounts of student aid received; and information about career programs, such as the occupation the program is meant to provide training for and relevant licensure information. Certain information may be highlighted or otherwise emphasized to assist viewers in finding key points of information.

For eligible non-GE programs classified by the Department as ''high-debt-burden,'' proposed § 668.407 would require students to acknowledge viewing these informational disclosures prior to receiving title IV, HEA funds for enrollment in these programs.

Reasons: The proposed regulations include two debt-to-earnings measures that are similar to those under the 2014 Prior Rule. The debt-to-earnings measures would assess the debt burden incurred by students who completed a program in relation to their earnings. Comparing debt to earnings is a commonly accepted practice when making determinations about a person's relative financial strength, such as when a lender assesses suitability for a mortgage or other financial product. To determine the likelihood a borrower will be able to afford repayments, lenders use debt-to-earnings ratios to consider whether the recipient would be able to afford to repay the debt with the earnings available to them. This practice also protects borrowers from incurring debts that they cannot afford to repay and can prevent negative consequences associated with delinquency and default such as damaged credit scores.

Using the two D/E measures together, the Department would assess whether a program leads to reasonable debt levels in relation to completers' earnings outcomes. This categorization based on the program's median earnings and median debt levels is depicted in Figure 1 below. This Figure shows how the two D/E rates are used to define ''high debt-burden'' programs, using the relevant amortization rate of certificate programs as an illustrative example. The region labelled D, where program completers' median debt levels are high relative to their median earnings, is categorized as ''high debt burden.''

Figure 1.



Under the proposed regulations, the annual debt-to-earnings rate would estimate the proportion of annual earnings that students who complete the program would need to devote to annual debt payments. The discretionary debt-to-earnings rate would measure the proportion of annual discretionary income—the amount of income above 150 percent of the Poverty Guideline for a single person in the continental United States—that students who complete the program would need to devote to annual debt payments. We note that given the variation in what is an affordable payment from borrower to borrower, a variety of definitions could potentially be justified. We do not mean to enshrine a single definition for affordability across every possible purpose, but for this proposed rule we choose to maintain the standard used under the 2014 Prior Rule.

The proposed thresholds for the discretionary D/E rate and the annual D/E rate are based upon expert recommendations and mortgage industry practices. The acceptable threshold for the discretionary income rate would be set at 20 percent, based on research conducted by economists Sandy Baum and Saul Schwartz,[88] which the Department previously considered in connection with the 2011 and 2014 Prior Rules. Specifically, Baum and Schwartz proposed benchmarks for manageable debt levels at 20 percent of discretionary income and concluded that there are virtually no circumstances under which higher debt-service ratios would be reasonable.

In the Figure above, the points along the steeper of the two lines drawn represents the combination of median earnings (on the x-axis) and median debt levels (on the y-axis) where the debt-service payments on a 10-year repayment plan at 4.27 percent interest are exactly equal to 20 percent of discretionary income. Programs with median debt and earnings levels above that line (regions B and D) have discretionary D/E rates above 20 percent, and programs below that line (regions A and C) have discretionary D/E rates below 20 percent.

The acceptable threshold of 8 percent for the annual D/E rate used in the proposed regulations has been a reasonably common mortgage-underwriting standard, as many lenders typically recommend that all non-mortgage loan installments not exceed 8 percent of the borrower's pretaxed income. Studies of student debt have accepted the 8 percent standard and some State agencies have established guidelines based on this limit. Eight percent represents the difference between the typical ratios used by lenders for the limit of total debt service payments to pretaxed income, 36 percent, and housing payments to pretax income, 28 percent.

In Figure 1, the less steep of the two lines shows the median earnings and debt levels where annual D/E is exactly 8 percent. Programs above the line (regions D and C) have annual D/E greater than 8 percent and programs below the line have annual D/E less than 8 percent (regions B and A). Note that programs are defined as ''high debt-burden'' only if their discretionary D/E is above 20 percent and their annual D/E is above 8 percent. As a result, the use of both measures means that programs in region B and C are not deemed ''high debt-burden'' even though they have debt levels that are too high based on one of the two standards. Classifying programs that have D/E rates below the discretionary D/E threshold but above the annual D/E threshold (*i.e.,* region C) as not ''high debt-burden'' reflects the fact that devoting the same share of earnings to service student debt is less burdensome when earnings are higher. For example, paying $2,000 per year is less manageable when you make $20,000 a year than paying $4,000 per year when you make $40,000 a year, since at lower levels of income most spending must go to necessities.

[88] Baum, Sandy, and Schwartz, Saul, 2006. ''How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.'' *eric.ed.gov/?id=ED562688.*

The D/E rates would help identify programs that burden students who complete the programs with unsustainable debt, which may both generate hardships for borrowers and pass the costs of loan repayment on to taxpayers. But the D/E measures do not capture another important aspect of financial value, which is the extent to which graduates improve their earnings potential relative to what they might have earned if they did not pursue a higher education credential. Some programs lead to very low earnings, but still pass the D/E metrics either because typical borrowing levels are low or because few or no students borrow (and so median debt is zero, regardless of typical levels among borrowers). The Department believes that an additional metric is necessary beyond the D/E measures, to ensure students are aware that these low-earnings programs may not be delivering on their promise or providing what students expected from a postsecondary education in helping them secure more remunerative employment.

We propose, therefore, to calculate an earnings premium metric.[89] This metric would be equal to the median earnings of program graduates measured three years after they complete the program, minus the median earnings of high school graduates (or holders of an equivalent credential) who are between the ages of 25 and 34, and either working or unemployed, excluding individuals not in the labor force, in the State where the institution is located, or nationally if fewer than 50 percent of the students in the program are located in the State where the institution is located while enrolled. When this earnings premium is positive, it indicates that graduates of the program gain financially (*i.e.,* have higher typical earnings than they might have had they not attended college).

Similar earnings premium metrics are used ubiquitously by economists and other analysts to measure the earnings gains associated with college credentials relative to a high school education.[90] Other policy researchers have proposed similar earnings premium measures for accountability purposes that incorporate additional adjustments to subtract some amortized measure of the total cost of college to estimate a ''net earnings premium.'' [91] At the same time, our proposed measure is conservative in the sense that it would compare the earnings of completers only to the earnings of high school graduates, without incorporating the additional costs students incur to earn the credential or the value of their time spent pursuing the credential. Moreover, as noted above, the corresponding level of earnings that programs must exceed is modest—corresponding approximately to the earnings someone working full-time at an hourly rate of $12.50 might earn.

As discussed elsewhere in this NPRM, student eligibility requirements in Section 484 of the HEA support this concept that postsecondary programs supported by title IV, HEA funds should lead to outcomes that exceed those obtained by individuals who have only a secondary education. To receive title IV, HEA funds, HEA section 484 generally requires that students have a high school diploma or recognized equivalent. Students who do not have such credentials have a more limited path to title IV, HEA aid, involving ascertainment of whether they have the ability to benefit from their postsecondary program. These statutory requirements, in effect, make high-school-level achievement the presumptive starting point for title IV, HEA funds. Postsecondary training that is supported by title IV, HEA funds should help students to progress and achieve beyond that baseline. The earnings premium follows from the principle that if postsecondary training must be for individuals who are moving beyond secondary-level education, knowledge, and skills, it is reasonable to expect graduates of those programs to earn more than someone who never attended postsecondary education in the first place.

The Department would classify programs as ''low earning'' if the earnings premium is equal to zero or is negative. This is again a conservative approach, using this label only when a majority of program graduates—that is, ignoring the (likely lower) earnings of students who do not complete the program—fail to out-earn the majority of individuals who never attend postsecondary education. As noted above, this metric would also ignore tuition costs and the value of students' time in earning the degree. The ''low earning'' label suggests that, even ignoring these costs, students are not financially better off than students who did not attend college.

The Department also considered whether this approach would create a risk of programs being labelled ''low-earning'' based on earnings measures several years after graduation, even though those programs eventually lead to significantly higher levels of earnings over a longer time horizon. Based on the estimates in the RIA, however, most programs that would be identified as ''low-earning'' are certificate programs, and for these programs in particular, any earnings gains tend to be realized shortly after program completion (*i.e.,* often immediately or within a few quarters), whereas earnings trajectories for typical degree earners tend to continue to grow over time.[92]

The D/E and earnings premium metrics capture related, but distinct and important dimensions of how programs affect students' financial well-being. The D/E metric is a measure of debt-affordability that indicates whether the typical graduate will have earnings enough to manage their debt service payments without incurring undue hardship. For any median earnings level of a program, the D/E metric and thresholds imply a maximum level of total borrowing beyond which students should be concerned that they may not be able to successfully manage their debt. The earnings premium measure, meanwhile, captures the extent to which programs leave graduates better off financially than those who do not enroll in college, a minimal benchmark that students pursuing postsecondary credentials likely expect to achieve. In addition to capturing distinct aspects of programs' effects on students' financial well-being, these metrics complement each other. For example, as the RIA shows, borrowers in programs that pass the D/E metric but fail the EP metric have very high rates of default, so the EP metric helps to identify programs where borrowing may be overly risky even when debt levels are relatively low.

The Department believes this information on financial value is important to students and would enable them to make a more informed decision, which may include weighing whether low-earnings or high-debt-burden programs nonetheless help them achieve other non-financial goals that

[89] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see above at [TK—preamble general introduction, legal authority], and below at [TK—method for calculating metrics, around p.180], and at [TK—GE eligibility, around p.250]. The discussion here concentrates on transparency issues.

[90] See for example, *www.hamiltonproject.org/papers/major_decisions_what_graduates_earn_over_their_lifetimes/, cew.georgetown.edu/cew-reports/the-college-payoff/, www.clevelandfed.org/publications/economic-commentary/2012/ec-201210-the-college-wage-premium,* among many other examples.

[91] Matsudaira and Turner Brookings. PVC ''threshold zero'' measure.

[92] Minaya, Veronica and Scott-Clayton, Judith (2022). Labor Market Trajectories for Community College Graduates: How Returns to Certificates and Associate's Degrees Evolve Over Time. *Education Finance and Policy, 17*(1): 53–80.

they might find more important when considering whether to attend.

Helping students make informed decisions may provide other benefits, too. First, as shown in the RIA, low-earnings programs that are not categorized as high debt-burden still have very high rates of student loan default and low repayment rates. For example, borrowers in low-earnings programs that are not high debt-burden have default rates 12.6 percent higher than high-debt-burden programs that have earnings above the level of a high school graduate in their State. The low-earnings classification complements the high debt-burden classification in identifying programs where borrowers are likely to struggle to manage their loans. Second, low-earnings programs where students borrow generate ongoing costs to taxpayers. Student loans from the Department are used to provide tuition revenue to the program. But if low-earning graduates repay using income driven repayment plans, then their payments will often be too low to pay down their principal balances despite spending years or even decades in repayment. As a result, a high share of the loans made to individuals in such programs would be likely to be eventually forgiven at taxpayer expense. If low-earning borrowers don't use income driven repayment plans, the RIA shows they are at higher risk of defaulting on their loans, which also tends to increase the costs of student loans to taxpayers.

The Department would calculate both the D/E rates and the earnings premium measure using earnings data provided by a Federal agency with earnings data, which we propose to define in § 668.2. The Federal agency with earnings data must have data sufficient to match with title IV, HEA recipients in the program and could include agencies such as the Treasury Department, including the Internal Revenue Service (IRS), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau. If the Federal agency with earnings data does not provide earnings information necessary for the calculation of these metrics, we would not calculate the metrics and the program would not receive rates for the award year. Similarly, if the minimum number of completers required to calculate the D/E rates or earnings threshold metrics to be calculated is not met, the program would not receive rates for the award year. For a year for which the D/E rates or earnings premium metric is not calculated, we believe it is logical for the program to retain the same status as under its most recently calculated results for purposes of determining whether the program leads to acceptable outcomes and whether current and prospective students should be alerted to those outcomes.

Calculating D/E Rates (§ 668.403)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add new § 668.403 to specify the methodology the Department would use to calculate D/E rates.

Section 668.403(a) would define the program's annual D/E rate as the completers' annual loan payment divided by their median annual earnings. The program's discretionary D/E rate would equal the completers' annual loan payment divided by their median adjusted annual earnings after subtracting 150 percent of the poverty guideline for the most recent calendar year for which annual earnings are obtained.

Under § 668.403(b), the Department would calculate the annual loan payment for a program by (1) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student, computed as described in § 668.403(d), or the total amount for tuition and fees and books, equipment, and supplies for each student, less the amount of institutional grant or scholarship funds provided to that student; removing the highest loan debts for a number of students equal to those for whom the Federal agency with earnings data does not provide median earnings data; and calculating the median of the remaining amounts; and (2) Amortizing the median loan debt. The length of the amortization period would depend upon the credential level of the program, using a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate; a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or a 20-year repayment period for any other program. The amortization calculation would use an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during a period that varies based on the credential level of the program. For undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs, the average interest rate would reflect the three consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students. As an example, for an undergraduate certificate program, if the two-year cohort period is award years 2024–2025 and 2025–2026, the interest rate would be the average of the interest rates for the years from 2023–2024 through 2025–2026. For graduate certificate programs and master's degree programs, the average interest rate would reflect the three consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to graduate students. For bachelor's degree programs, the average interest rate would reflect the six consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students. For doctoral programs and first professional degree programs, the average interest rate would reflect the six consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

Under new § 668.403(c), the Department would obtain program completers' median annual earnings from a Federal agency with earnings data for use in calculating the D/E rates.

In determining the loan debt for a student under new § 668.403(d), the Department would include (1) The total amount of title IV loans disbursed to the student for enrollment in the program, less any cancellations or adjustments except for those related to false certification or borrower defense discharges and debt relief initiated by the Secretary as a result of a national emergency, and excluding Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants; (2) Any private education loans as defined in § 601.2, including such loans made by the institution, that the student borrowed for enrollment in the program; and (3) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any program that the student is obligated to repay after completing the program, including extensions of credit described in the definition of, and excluded from, the term ''private education loan'' in § 601.2. The Department would attribute all loan debt incurred by the student for enrollment in any undergraduate program at the institution to the highest credentialed undergraduate program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates. Similarly, we would attribute all loan debt incurred by the student for enrollment in any graduate program at the institution to the highest credentialed graduate program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates. The Department would exclude any loan debt incurred by the student for enrollment in programs at other institutions, except that the Secretary could choose to include loan debt incurred for enrollment in programs at other institutions under common ownership or control.

Under new § 668.403(e), the Department would exclude a student from both the numerator and the denominator of the D/E rates calculation if (1) One or more of the student's title IV loans are under consideration or have been approved by the Department for a discharge on the basis of the student's total and permanent disability; (2) The student enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Department obtains earnings information; (3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the D/E rates; (4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the D/E rates; (5) The student is enrolled in an approved prison education program; (6) The student is enrolled in a comprehensive transition and postsecondary (CTP) program; or (7) The student died. For purposes of determining whether a student completed a higher credentialed undergraduate program, the department would consider undergraduate certificates or diplomas, associate degrees, baccalaureate degrees, and post-baccalaureate certificates as the ascending order of credentials. For purposes of determining whether a student completed a higher credentialed graduate program, the Department would consider graduate certificates, master's degrees, first professional degrees, and doctoral degrees as the ascending order of credentials.

As further explained under ''Reasons'' below, to prevent privacy or statistical reliability issues, under § 668.403(f) the Department would not issue D/E rates for a program if fewer than 30 students completed the program during the two-year or four-year cohort period, or the Federal agency with earnings data does not provide the median earnings for the program.

For purposes of calculating both the D/E rates and the earnings threshold measure, the Department proposes to use a two-year or a four-year cohort period similar to the 2014 Prior Rule. The proposed rule would, however, measure the earnings of program completers approximately one year later relative to when they complete their degree than under the 2014 Prior Rule. We would use a two-year cohort period when the number of students in the two-year cohort period is 30 or more. A two-year cohort period would consist of the third and fourth award years prior to the year for which the most recent data are available at the time of calculation. For example, given current data production schedules, the D/E rates and earnings premium measure calculated to assess financial value starting in award year 2024–2025 would be calculated in late 2024 or early in 2025. For most programs, the two-year cohort period for these metrics would be award years 2017–2018 and 2018–2019 using the amount of loans disbursed to students as of program completion in those award years and earnings data measured in calendar years 2021 for award year 2017–2018 completers and 2022 for award year 2018–2019 completers, roughly 3 years after program completion.

We would use a four-year cohort period to calculate the D/E rates and earnings thresholds measure when the number of students completing the program in the two-year cohort period is fewer than 30 but the number of students completing the program in the four-year cohort period is 30 or more. A four-year cohort period would consist of the third, fourth, fifth, and sixth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, for the D/E rates and the earnings threshold measure calculated to assess financial value starting in award year 2024–2025, the four-year cohort period would be award years 2015–2016, 2016–2017, 2017–2018, and 2018–2019; and earnings data would be measured using data from calendar years 2019 through 2022.

Similar to the 2014 Prior Rule, the cohort period would be calculated differently for programs whose students are required to complete a medical or dental internship or residency, and who therefore experience an unusual and unavoidable delay before reaching the earnings typical for the occupation. For this purpose, a required medical or dental internship or residency would be a supervised training program that (1) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science; (2) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and (3) Must be completed before the student may be licensed by a State and board certified for professional practice or service. The two-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth and seventh award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, D/E rates and the earnings threshold measure calculated for award year 2024–2025 would be calculated in late 2024 or early 2025 using earnings data measured in calendar years 2021 and 2022, with a two-year cohort period of award years 2014–2015 and 2015–2016. The four-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, the D/E rates and the earnings threshold measure calculated for award year 2024–2025 would be calculated in late 2024 or early 2025 using earnings data measured in calendar years 2021 and 2022, and the four-year cohort period would be award years 2012–2013, 2013–2014, 2014–2015, and 2015–2016.

The Department recognizes that some other occupations, such as clinical psychology, may require a certain number of post-graduate work hours, which might vary from State to State, before an individual fully matriculates into the profession, and that, during this post-graduate working period, a completer's earnings may be lower than are otherwise typical for individuals working in the same occupation. We would welcome public comments about data-informed ways to reliably identify such programs and occupations and determine the most appropriate time period for measuring earnings for these programs. We are particularly interested in approaches that narrowly identify programs where substantial post-graduate work hours (that may take several years to complete) are required before a license can be obtained, and where earnings measured three years after completion are therefore unusually low relative to subsequent earnings.

Reasons: The methodology we would use to calculate the D/E rates under the proposed regulations is largely similar to that of the 2014 Prior Rule. We discuss our reasoning by subject area.

Minimum Number of Students Completing the Program

As under the 2014 Prior Rule, the proposed regulations would establish a minimum threshold number of students who completed a program, or ''n-size,'' for D/E rates to be calculated for that program. Both the 2014 Prior Rule and the proposed regulations require a minimum n-size of 30 students completing the program, after subtracting the number of completers who cannot be matched to earnings data. However, some programs are relatively small in terms of the number of students enrolled and, perhaps more critically, in the number of students who complete the program. In many cases, these may be the very programs whose performance should be measured, as low completion rates may be an indication of poor quality. The 2019 Prior Rule also expressed concern with the 30-student cohort size requirement, stating that it exempted many programs at non-profit institutions while having a disparate impact on proprietary institutions.

We considered and presented, during the negotiations that led to the 2014 Prior Rule, a lower n-size of 10. At that time the non-Federal negotiators raised several issues with the proposal to use a lower n-size of 10. First, some of the negotiators questioned whether the D/E rates calculations using an n-size of 10 would be statistically valid. Further, they were concerned that reducing the minimum n-size to 10 could make it too easy to identify particular individuals, putting student privacy at risk. These negotiators noted that other entities requiring these types of calculations used a minimum n-size of 30 to address these two concerns.

Other non-Federal negotiators supported the Department's past proposal to reduce the minimum n-size from 30 to 10 students completing the program. They argued that the lower number would allow the Department to calculate D/E rates for more programs, which would decrease the risk that programs that serve students poorly are not held accountable. They argued that some programs have very low numbers of students who complete the program, not because these programs enroll small numbers of students, but because they do not provide adequate support or are of low quality and, as a result, relatively few students who enroll actually complete the program. They asserted that these poorly performing programs may never be held accountable under the D/E rates measure because they would not have a sufficient number of completers for the D/E rates to be calculated. For these reasons, these negotiators believed that the Secretary should calculate D/E rates for any program where at least 10 students completed the program during the applicable cohort period.

As in our past analysis, we acknowledge the limitations of using a minimum n-size of 30 students. However, to protect the privacy of individuals who complete programs that enroll relatively few students, and to be consistent with past practice as well as existing regulations at § 668.216, which governs institutional cohort default rates, we propose to retain the minimum n-size of 30 students who complete the program as we did in the 2014 Prior Rule. This is also consistent with IRS data policy. As further explained in our discussion of proposed § 668.405, the IRS adds a small amount of statistical noise to earnings data for privacy protection purposes, which would be greater for n-sizes smaller than 30. We also note that the four-year cohort will allow the Department to determine D/E rates for programs that have at least 30 completers over a four-year cohort period for whom the Department obtains earnings data, which would help to reduce the number of instances in which rates could not be calculated because of the minimum n-size.

As described in detail in the RIA, the Department estimates that 75 percent of GE enrollment and 15 percent of GE programs would have sufficient n-size to have metrics computed with a two-year cohort. An additional 8 percent of GE enrollment and 11 percent of GE programs would be likely to have metrics computed using a four-year completer cohort. The comparable rates for eligible non-GE programs are 69 percent of enrollment and 19 percent of programs with a n-size of 30 covered by two-year cohort metrics, with the use of four-year cohort rates likely increasing these coverage rates of non-GE enrollment and programs by 13 and 15 percent, respectively.

Amortization

As under the 2014 Prior Rule, the proposed regulations would use three different amortization periods, based on the credential level of the program for determining a program's annual loan payment amount. The schedule under the proposed regulations reflects that the regulations are an accountability tool to protect students and taxpayers from programs that leave the majority of their graduates with subpar early career earnings compared to those who have not completed postsecondary education or subpar early career earnings relative to their debts. This schedule would reflect the loan repayment options available under the HEA, which are available to borrowers based on the amount of their loan debt, and would account for the fact that borrowers who enrolled in higher-credentialed programs (*e.g.,* bachelor's and graduate degree programs) are likely to have incurred more loan debt than borrowers who enrolled in lower-credentialed programs and, as a result, are more likely to select a repayment plan that would allow for a longer repayment period.

We decided to choose 10 years as the shortest amortization period available to borrowers because that is the length of the standard repayment plan that is by default offered to borrowers. Moreover, FSA data show that the borrowers who have balances most likely to be associated with certificate programs are most likely to be making use of the 10-year standard plan. Even students who borrow to complete a short-term program are provided a minimum of 10 years to repay their student loan balances. Therefore, it would be inappropriate to assign an amortization period shorter than 10 years to students in such programs.

Loan Debt

As under the 2014 Prior Rule, in calculating a student's loan debt, the Department would include title IV, HEA program loans and private education loans that the student obtained for enrollment in the program, less any cancellations or adjustments except for those related to false certification or borrower defense discharges and debt relief initiated by the Secretary as a result of a national emergency. We would not reduce debt to reflect these types of cancellation since they are unrelated to the value of the program under normal circumstances, and because including that debt would be a better reflection of how the program's costs affect students' financial outcomes in the absence of these relief programs.

For these purposes the amount of title IV, HEA loan debt would exclude Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants. The amount of a student's loan debt would also include any outstanding debt resulting from credit extended to the student by, or on behalf of, the institution (*e.g.,* institutional financing or payment plans) that the student is obligated to repay after completing the program. Including both private loans and institutional loans, in addition to Federal loan debt, would provide the most complete picture of the financial burden a student has incurred to enroll in a program.

Including private loans also ensures that an institution could not attempt to alter its D/E rates by steering students away from the Federal loan programs to a private option.

The Department previously considered including Direct PLUS Loans made to parents of dependent students in the debt measure for D/E rates, on the basis that a parent PLUS loan is intended to cover costs related to education and associated with the dependent student's enrollment in an eligible program of study. Some non-Federal negotiators questioned the inclusion of parent PLUS loans, arguing that a dependent student does not sign the promissory note for a parent loan and is not responsible for repayment. Other non-Federal negotiators expressed concern that failing to include parent PLUS loans obtained on behalf of dependent students could incentivize institutions to counsel students away from Direct Subsidized and Unsubsidized Loans, and to promote more costly parent loans, in an attempt to evade accountability under the D/E rates metric. While we recognize these competing concerns, we believe that the primary purpose of the D/E rates is to indicate whether graduates of the program can afford to repay their educational debt. Repayment of PLUS loans obtained by a parent on behalf of a dependent student is ultimately the responsibility of the parent borrower, not the student. Moreover, the ability to repay parent PLUS debt depends largely upon the income of the parent borrower, who did not attend the program. We believe that including in a program's D/E rates the parent PLUS debt obtained on behalf of dependent students would cloud the meaning of the D/E rates and would ultimately render them less useful to students and families. We remain concerned, however, about the potential for an institution to steer families away from less costly Direct Subsidized and Unsubsidized Loans towards parent PLUS in an attempt to manipulate its D/E rates, and we have addressed this concern, in part, by proposing changes to the administrative capability regulations at § 668.16(h) that would require institutions to adequately counsel students and families about the most favorable aid options available to them. We welcome public comments on additional measures the Department could take to address this issue.

Loan Debt Cap

We propose to cap loan debt for the D/E rates calculations at the net direct costs charged to a student, defined as the costs assessed to the student for enrollment in a program that are directly related to the academic program, minus institutional grants and scholarships received by that student. Under this calculation, direct costs include tuition and fees as well as books, equipment, and supplies. Although institutions in most cases cannot directly limit the amount a student borrows, institutions can exercise control over these types of direct costs for which a student borrows. The total of the student's assessed tuition and fees, and the student's allowance for books, supplies, and equipment would be included in the cost of attendance disclosed under proposed § 668.43(d). The 2014 Prior Rule capped loan debt for D/E rates at the total direct costs using the same definition. In this rule, we further propose to subtract institutional grants and scholarships from the measure of direct costs to produce a measure of net direct costs. For purposes of the D/E rates, we propose to define institutional grants and scholarships as financial assistance that does not have to be repaid that the institution—or its affiliate—controls or directs to reduce or offset the original amount of a student's institutional costs. Upon further consideration and in the interest of fairness to institutions that provide substantial assistance to students, we believe it is necessary to account for institutional grants and scholarships to ensure that the amount of debt disclosed under the D/E rates accurately reflects the borrowing necessary for the student to finance the direct costs of the program.

Attribution of Loan Debt

As under the 2014 Prior Rule, we propose that any loan debt incurred by a student for enrollment in undergraduate programs be attributed to the highest credentialed undergraduate program completed by the student at the institution, and any loan debt incurred for enrollment in graduate programs at an institution be attributed to the highest credentialed graduate program completed by the student. The undergraduate credential levels in ascending order would include undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate. Graduate credential levels in ascending order would include graduate certificate (including a postgraduate certificate), master's degree, first-professional degree, and doctoral degree.

We do not believe that undergraduate debt should be attributed to the debt of graduate programs in cases where students who borrow as undergraduates continue on to complete a graduate credential at the same institution, because the relationships between the coursework and the credential are different. The academic credits earned in an associate degree program, for example, are often necessary for and would be applied toward the credits required to complete a bachelor's degree program. It is reasonable then to attribute the debt associated with all of the undergraduate academic credit earned by the student to the highest undergraduate credential subsequently completed by the student. This reasoning does not apply to the relationship between undergraduate and graduate programs. Although a bachelor's degree might be a prerequisite to pursue graduate study, the undergraduate academic credits would not be applied toward the academic requirements of the graduate program.

In attributing loan debt, we propose to exclude any loan debt incurred by the student for enrollment in programs at another institution. However, the Secretary could include loan debt incurred by the student for enrollment in programs at other institutions if the institution and the other institutions are under common ownership or control. The 2010 and 2014 Prior Rules included the same provision. As we noted previously, although we generally would not include loan debt from other institutions students previously attended, entities with ownership or control of more than one institution offering similar programs might otherwise be incentivized to shift students between those institutions to shield some portion of the loan debt from the D/E rates calculations. Including the provision that the Secretary may choose to include that loan debt should serve to discourage institutions from making these kinds of changes and would assist the

Department in holding such institutions accountable.

Exclusions

Under the proposed regulations, we would exclude from the D/E rates calculations most of the same categories of students that we excluded under the 2014 Prior Rule, including students with one or more loans discharged or under consideration for discharge based on the borrower's total and permanent disability, students enrolled full-time in another eligible program during the year for which earnings data was obtained, students who completed a higher credentialed undergraduate or graduate program as of the end of the most recently completed award year prior to the D/E rates calculation, and students who have died. We believe the approach we adopted in the 2014 Prior Rule continues to be sound policy.

Under these proposed regulations, we would also exclude students enrolled in approved prison education programs, as defined under section 484(t) of the HEA and 34 CFR 668.236. Employment options for incarcerated persons are limited or nonexistent, and Direct Loans are not available to them, so including these students in D/E rates would disincentivize the enrollment of incarcerated students and unfairly disadvantage institutions that may otherwise offer programs to benefit this population. The proposed regulations would also exempt comprehensive transition and postsecondary programs, as defined at § 668.231. CTP programs are designed to provide integrated educational opportunities for students with intellectual disabilities, for whom certain requirements for title IV, HEA eligibility are waived or modified under subpart O of part 668. Unlike most eligible students, these students are not required to possess a high school diploma or equivalent, or to pass an ability-to-benefit test to establish eligibility for title IV, HEA funds. The earnings premium measure proposed in subpart Q is designed to compare postsecondary completers' earnings outcomes to the earnings of those with a high school diploma or equivalent but no postsecondary education. We believe that to judge a CTP program's earnings outcomes against the outcomes of individuals with a high school diploma or the equivalent would be an inherently flawed comparison, as students enrolled in a CTP program are not required to have a high school credential or equivalent. These students also are not eligible to obtain Federal student loans, which would render debt-to-earnings rates meaningless for these programs.

Under the proposed regulations we would include students whose loans are in a military-related deferment. This is a change from the 2014 Prior Rule. Although completers who subsequently choose to serve in the armed forces are demonstrably employed and may access military-related loan deferments, and we believe that their earnings would likely raise the median income measured for the program, that does not eliminate the harm to them if their earnings do not otherwise support the debt they incurred. We believe that servicemembers should expect and receive equal consumer protections as those who enter other occupations.

We continue to believe that we should not include the earnings or loan debt of students who were enrolled full time in another eligible program at the institution or at another institution during the year for which the Secretary obtains earnings information. These students are unlikely to work full time while in school and consequently their earnings would not be reflective of the program being assessed under the D/E rates. It would therefore be unfair to include these students in the D/E rates calculation.

Calculating Earnings Premium Measure (§ 668.404)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.404 to specify the methodology the Department would use to calculate the earnings premium measure. The Department would assess the earnings premium measure for a program by determining whether the median annual earnings of the title IV, HEA recipients who completed the program exceed the earnings threshold. The Department would obtain from a Federal agency with earnings data the most currently available median annual earnings of the students who completed the program during the cohort period. Using data from the U.S. Census Bureau, the Department would also calculate an earnings threshold, which would be the median earnings for working adults aged 25 to 34, who either worked during the year or indicated that they were unemployed when they were surveyed. The earnings threshold would be calculated based on the median for State in which the institution is located, or the national median if fewer than 50 percent of students in the program are located in the State where the institution is located during enrollment in the program. The Department would publish the state and national earnings thresholds annually in a notice in the **Federal Register**. We would exclude a student from the earnings premium measure calculation under the same conditions for which a student would be excluded from the D/E rates calculation under § 668.403, including if (1) One or more of the student's title IV loans are under consideration, or have been approved, for a discharge on the basis of the student's total and permanent disability under 34 CFR 674.61, 682.402, or 685.212; (2) The student was enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Department obtains earnings information; (3) For undergraduate programs, the student completed a higher credentialed undergraduate program subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the earnings threshold measure; (4) For graduate programs, the student completed a higher credentialed graduate program subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the earnings threshold measure; (5) The student is enrolled in an approved prison education program; (6) The student is enrolled in a comprehensive transition and postsecondary program; or (7) The student died. The Department would not issue the earnings premium measure for a program if fewer than 30 students completed the program during the two-year or four-year cohort period. The Department also would not issue the measure if the Federal agency with earnings data does not provide the median earnings for the program, for example because exclusions or non-matches reduce the number of students available to be matched to earnings data to the point that the agency is no longer permitted to disclose median earnings due to privacy restrictions.

Reasons: As discussed in ''§ 668.402 Financial value transparency framework,'' some programs with very poor labor market outcomes could potentially achieve passing D/E rates with low levels of loan debt, or because fewer than half of completers receive student loans. Such programs may not necessarily encumber students with high levels of debt but may nonetheless fail to leave students financially better off than had they not pursued a postsecondary education credential, especially given the financial and time costs for students. ED believes that a postsecondary program cannot be considered to lead to an acceptable earnings outcome if the median earnings of the program's completers do not, at a minimum, exceed the earnings of those who only completed the equivalent of a secondary school education.[93]

This concept that postsecondary education must entail academic rigor and career outcomes beyond what is delivered by high school is embedded in the student eligibility criteria in the HEA. Thus, 20 U.S.C. 1001 states that an institution of higher education must only admit as regular students those individuals who have completed their secondary education or met specific requirements under 20 U.S.C. 1091(d), which includes an assessment that they demonstrate the ability to benefit from the postsecondary program being offered. The definitions for a proprietary institution of higher education or a postsecondary vocational institution in 20 U.S.C. 1002 maintain the same requirement for admitting individuals who have completed secondary education. Similarly, there are only narrow exceptions for students beyond the age of compulsory attendance who are dually or concurrently enrolled in postsecondary and secondary education. The purpose of such limitations is to help ensure that postsecondary programs build skills and knowledge that extend beyond what is taught in high school.

The Department thus believes it is reasonable that, if a program provides students an education that goes beyond the secondary level, students should be alerted in cases where their financial outcomes might not exceed those of the typical secondary school graduate. This does not mean that every individual who attends a program needs to earn more than a high school graduate. Instead, it requires only that at least half of program graduates show that they are earning as much or more than individuals who had never completed postsecondary education. We also note that the earnings premium is a conservative measure in that the program earnings measures only include students who complete the program of study, and do not include students who enrolled but exited without completing the program of study, as these students would in most cases have lower earnings than graduates. To provide consistency and simplicity, the program earnings information used to calculate the earnings premium measure would be the same as the earnings information used to determine D/E rates.

The Department would compare the median earnings of the program's completers to the median earnings of adults aged 25 to 34, who either worked during the year or indicated they were unemployed (*i.e.,* available and looking for work), with only a high school diploma or recognized equivalent in the State in which the institution is located while enrolled. The Department chose this range of ages to calculate the earnings threshold benchmark because it matches well the age students are expected to be three years after the typical student graduates (*i.e.,* the year in which their earnings are measured under the rule) from the programs covered by this regulation. The average age three years after students graduate across all credential levels is 30 years, and the interquartile range (*i.e.,* from the program at the 25th percentile to the 75th percentile of average age) across all programs extends from 27 to 34 years of age. The 25 to 34 year age range encompasses the interquartile range for most credential types, with the lone exceptions being master's degrees, where the interquartile range of average ages when earnings are measured is 30 to 35, and doctoral programs, which range from 32 to 43 years old.[94] Among these credential programs, students tend to be older than the high school graduates to which they are being compared.

Because many programs are offered through distance education or serve students from neighboring States, if fewer than 50 percent of the students in a program are located in the State where the institution is located, the earnings premium calculation would compare the median earnings of the program's completers to the median earnings nationally for a working adult aged 25 to 34, who either worked during the year or indicated they were unemployed when interviewed, with only a high school diploma or the recognized equivalent. Although we recognize that some nontraditional learners attend and complete programs past age 34, either for retraining or to seek advancement within a current profession, we believe that the earnings premium measure would provide the most meaningful information to students and prospective students by illustrating the earnings outcomes of a program's graduates in comparison to others relatively early in their careers. As the Regulatory Impact Analysis explains, according to FAFSA data, the typical age of earnings measurement (three years after completion) for students across all program types is 30. This average varies only slightly across undergraduate programs: undergraduate certificate program graduates are an average of 30.6 years when their earnings are measured, associate degree graduates are 30.4, bachelor's degree graduates are 29.2, and all graduate credential graduates are older on average. Additionally, the ten highest-enrollment fields of study for undergraduate certificate programs—the credential level where the median earnings of programs are most likely to fall below the earnings threshold—all have a typical age at earnings measurement in the 25– to 34-year-old range.

We are aware that in some cases, earnings data for high school graduates to estimate an earnings threshold may not be as reliable or easily available in U.S. Territories, such as Puerto Rico. We welcome public comments on how to best determine a reasonable earnings threshold for programs offered in U.S. territories.

In addition, we recognize that it may be more challenging for some programs serving students in economically disadvantaged locales to demonstrate that graduates surpass the earnings threshold when the earnings threshold is based on the median statewide earnings, including locales with higher earnings. We invite public comments concerning the possible use of an established list, such as a list of persistent poverty counties compiled by the Economic Development Administration, to identify such locales, along with comments on what specific adjustments, if any, the Department should make to the earnings threshold to accommodate in a fair and data-informed manner programs serving those populations.

The Department chose to compute the earnings premium measure by comparing program graduates to those with only a secondary credential who are working or who reported themselves as unemployed, which means they do not currently have a job but report being available and looking for a position. By doing so, the threshold measure excludes individuals who are not in the labor force in calculating median high school graduate earnings. The Department believes this approach creates an appropriate comparison group for recent postsecondary program graduates, as we would anticipate that most graduates—especially those graduating from career training

[93] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see above at ''Background'' and at ''Financial value transparency scope and purpose (§ 668.401)'', and below at ''Gainful employment (GE) scope and purpose (§ 668.601)''. The discussion here concentrates on methodology.

[94] Graduate and Post-BA certificates, which make up 140 and 22 programs of the over 26,000 programs with earnings data have interquartile ranges of 30 to 37 and 32 to 39 respectively.

programs—are likely employed or looking for work.

Process for Obtaining Data and Calculating D/E Rates and Earnings Premium Measure (§ 668.405)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.405 to establish the process under which the Department would obtain the data necessary to calculate the financial value transparency metrics.

Under this proposed rule, the Department would use administrative data that institutions report to us to identify which students' information should be included when calculating the metrics established by this rule for each program. Institutions would be required to update or otherwise correct any reported data no later than 60 days after the end of an award year, in accordance with procedures established by the Department. We would use this administrative data to compile and provide to institutions a list of students who completed each program during the cohort period. Institutions would have the opportunity to review and correct completer lists. The finalized completer lists would then be used by the Department to obtain from a Federal agency with earnings data the median annual earnings of the students on each list; and to calculate the D/E rates and the earnings premium measure which we would provide to the institution. For each completer list the Department submits to the Federal agency with earnings data, the agency would return to the Department (1) The median annual earnings of the students on the list whom the Federal agency with earnings data matches to earnings data, in aggregate and not in individual form; and (2) The number, but not the identities, of students on the list that the Federal agency with earnings data could not match. If the information returned by the Federal agency with earnings data includes reports from records of earnings on at least 30 students, the Department would use the median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates and earnings premium measure for each program. If the Federal agency with earnings data reports that it was unable to match one or more of the students on the final list, the Department would not include in the calculation of the median loan debt for D/E rates the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Department would order the 100 listed students by the amounts borrowed and exclude from the D/E rates calculation the students with the three largest loan debts to calculate the median program loan debt.

Reasons: For the reasons discussed in § 668.401 ''Scope and purpose,'' we intend to establish metrics that would assess whether a program leads to acceptable debt and earnings outcomes. As further discussed in § 668.402 ''Financial value transparency framework,'' these metrics would include a program's D/E rates as well as an earnings premium measure. To the extent possible, in calculating these metrics the Department would rely upon data the institution is already required to report to us. As such, it would be necessary that current and reliable information be available to the Department. Institutions would therefore be required to update or otherwise correct any reported data no later than 60 days after the end of an award year, to ensure the accuracy of completers lists while allowing the Department to submit those lists to a Federal agency with earnings data in a timely manner.

We believe that providing institutions the opportunity to review and correct completer lists will promote transparency and provide helpful insight from institutions, while ultimately yielding more reliable eligibility determinations based upon the most current and accurate debt and earnings data possible. We recognize that reviewing completer lists for each program could generate some administrative burden for institutions, but we have attempted to mitigate this burden by ensuring that the completer list review process is optional for institutions. The Department would assume the accuracy of a program's initial completer list unless the institution provides corrections using a process prescribed by the Secretary within the 60-day timeframe provided in these regulations.

To safeguard the privacy of sensitive earnings data, the Federal agency with earnings data would not provide individual earnings data for each completer on the list to the Department. Instead, the Federal agency with earnings data would provide to the Department only the median annual earnings of the students on the list whom it matches to earnings data, along with the number of students on the list that it could not match, if any. This is in keeping with how the Department has received information on program and institutional earnings from other Federal agencies for years, as we have never obtained earnings information of individuals when using this approach.

For purposes of determining the median loan debt to be used in the D/E rates calculation, the Department would remove the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. In the absence of earnings data for specific borrowers, which would otherwise allow the Department to remove the loan debts specific to the borrowers whose earnings data could not be matched, we propose removing the highest loan debts to represent those borrowers because it is the approach to adjusting debt levels for unmatched individuals that is most favorable to institutions, yielding the lowest estimate of median debt for the subset of program graduates for whom earnings are observed that is consistent with the data.

The proposed rule does not specify a source of data for earnings, but rather allows the Department flexibility to work with another Federal agency to secure data of adequate quality and in a form that adequately protects the privacy of individual graduates. The Department's goal is to evaluate programs, not individual students. The earnings data gathered for purposes of this proposed rule would not be used to evaluate individual graduates in any way. Moreover, the Department would be seeking aggregate statistical information from a Federal agency with earnings data for combined groups of students, and would not receive any individual data that associate identifiable persons with earnings outcomes. The Department will determine the specific source of earnings data in the future, potentially considering such factors as data availability, quality, and privacy safeguards.

At this stage, however, the Department does have a preliminary preference regarding the source of earnings data. While the 2014 Prior Rule relied upon earnings data from the Social Security Administration, at this time we would prefer to use earnings data provided by the Internal Revenue Service (IRS). IRS now seems to be the highest quality data source available, and is the source used for other Department purposes such as calculating an applicant's title IV, HEA eligibility and determining a borrower's eligibility for income-driven student loan repayment plans. Moreover, the Department has successfully negotiated agreements with the IRS to produce statistical information for the College Scorecard. Although the underlying data used by both agencies is based on IRS tax records, as an added privacy safeguard we understand that the IRS would use a privacy-masking algorithm to add statistical noise to its estimates before disclosing median earnings information to the Department.

This statistical noise would take the form of a small adjustment factor designed to prevent disclosure of individual data. This adjustment factor can be positive or negative and tends to become smaller as the underlying number of individuals in the completion cohort in a program becomes larger. For a small number of programs, the adjustment factor could potentially affect whether some programs pass or fail the accountability metrics. The Department recognizes this creates a small risk of inaccurate determinations in both directions, including a very small likelihood that a program that would pass if its unadjusted median earnings data were used in calculating either D/E rates or the earnings premium. Using data on the distribution of noise in the IRS earnings figures used in the College Scorecard, we estimate that the probability that a program would be erroneously declared ineligible (that is, fail in 2 of 3 years using adjusted data when unadjusted data would result in failure for 0 years or 1 year) is less than 1 percent.

Assuming that such statistical noise would be introduced, the Department plans to counteract this already small risk of improper classification in several ways. First, we include a minimum n-size threshold as discussed under proposed § 668.403 to avoid disclosing median earnings information for smaller cohorts, where statistical noise would have a greater impact on the disclosed earnings measure. The n-size threshold effectively caps the influence of the noise on results under our proposed metrics. In addition, before invoking a sanction of loss of eligibility in the accountability framework described in proposed § 668.603, we require that GE programs fail the accountability measures multiple times.

Furthermore, elsewhere in the proposed rule, we establish an earnings calculation methodology that is more generous to title IV, HEA supported programs than what the Department adopted in the 2014 Prior Rule for GE programs. The proposed rule would measure the earnings of program completers approximately one year later (relative to when they complete their credential) than under the 2014 Prior Rule. This leads to substantially higher measured program earnings than under the Department's previous methodology—on the order of $4,000 (about 20 percent) higher for GE programs with earnings between $20,000 and $30,000, which are the programs most at risk for failing the earnings premium threshold.[95] The increase in earnings from this later measurement of income would provide a buffer more than sufficient to counter possible error introduced by the statistical noise added by the IRS. Additional adjustments would present unwelcome trade-offs, with little gain in protecting adequately performing programs in exchange for introducing another type of error. Adjusting earnings calculations to further reduce the low chance of programs failing the proposed metrics based on statistical noise would increase the risk of other kinds of errors, such as programs that should fail the proposed metrics appearing to pass based on an artificial increase in calculated earnings. On the other hand, and with respect to a related issue of earnings measurements, making special accommodations only for programs where under-reporting of earnings is suspected would differentially reward such programs and potentially create adverse incentives for programs to encourage such behavior. This could have the additional effect of inappropriately increasing public subsidies of such programs, as loan payments for program graduates would also be artificially reduced as a result of their lower reported earnings. We therefore do not believe it is necessary or appropriate to make other adjustments to the earnings calculations beyond those described above.

The Department also has gained a fresh perspective on earnings appeals in light of our experience, new research, and other considerations. In the 2014 Prior Rule the Department included an alternate earnings appeal to address concerns similar to those raised by some non-Federal negotiators in the 2022 negotiated rulemaking. The concerns were about whether programs preparing students to enter certain occupations, such as cosmetology, may have very low earnings in data obtained from Federal agencies because a substantial portion of a completer's income may derive from tips and gratuities that may be underreported or unreported to the IRS.

Those arguments on unreported income have become less persuasive to the Department based upon further review of Federal requirements for the accurate reporting of income; consideration that IRS income data is used without adjustment for determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans; past data submitted as part of the alternate earnings appeals; and new research on the effects of tipping on possible debt-to-earnings outcomes. As a result of this review, we have concluded that it would not be appropriate to include a similar appeal process in this proposed rule.

First, there is the issue of legal reporting requirements. The law requires taxpayers to report tipped income to the IRS. Failing to report all sources of the income to the IRS can lead to financial penalties and additional tax liability. And changes made in the American Rescue Plan Act lowered to $600 the reporting threshold for when a 1099–K is issued,[96] which will result in more third-party settlement organizations issuing these forms. Because of these recent changes, the proposed use of earnings data provided directly by a Federal agency with earnings data would be more comprehensive and reliable than previously observed in the 2014 Prior Rule. This is not to deny that some fraction of income will be unreported despite legal duties to report, but instead to recognize as well that legal demands and other relevant circumstances have changed.

Moreover, income adjustments to IRS earnings are not used in other parts of the Department's administration of the title IV, HEA programs. IRS income and tax data are used to determine a student's eligibility for Federal benefits, including the title IV, HEA programs, and we believe it would be most appropriate and consistent to rely on IRS data when measuring the outcomes of those programs. In particular, under the Department's various income-driven repayment plans, student loan borrowers can use their reported earnings to the IRS to establish eligibility for loan payments calculated based on their reported earnings, and so the Department has an independent interest in the level of these earnings since they impact loan repayment. While institutions cannot directly compel graduates to properly report tipped income, they are nonetheless

[95] This calculation is based on a comparison of (1) the earnings data released for GE programs in 2017 under the 2014 Prior Rule, inflation adjusted to 2019 dollars, to (2) earnings data for the subset of those GE programs still in existence, calculated using the methodology proposed in this NPRM.

[96] *https://www.govinfo.gov/content/pkg/PLAW-117publ2/html/PLAW-117publ2.htm.*

uniquely positioned to educate their students on the importance of meeting their obligation to properly observe Federal tax filing requirements when they enter or reenter the work force. Title IV, HEA support for students and educational programs is in turn supported by taxpayers, and the Department has a responsibility to protect taxpayer interests when implementing the statute.

Beyond those considerations, it is unlikely that any earnings appeal process would generate a better estimate of graduates' median earnings. To date, the Department has identified no other data source that could be expected to yield data of higher quality and reliability than the data available to the Department from the IRS. Alternative sources such as graduate earnings surveys would be more prone to issues such as low response rates and inaccurate reporting, could more easily be manipulated to mask poor program outcomes, and would impose significant administrative burden on institutions. One analysis of alternative earnings data, provided by cosmetology schools as part of the appeals process for GE debt-to-earnings thresholds under the 2014 Prior Rule, found that the average approved appeal resulted in an 82 percent increase in calculated earnings income relative to the numbers in administrative data.[97] Results like that appear to be implausibly high, given our experience and other considerations that we offer above and below. Without relying too heavily on any one study, we can suggest at this stage that it seems likely that the use of alternative earnings estimates, typically generated from student surveys, could yield a substantial overestimate of income above that of unreported tips.[98]

Furthermore, the plausible scope of the unreported income issue should be kept in perspective. First of all, in many fields of work the question of unreported income is insubstantial. Tip income, for instance, certainly is not typical in every occupation and profession in which people work after graduating having received aid from title IV, HEA. In the GE context, the number of occupations related to GE programs where tipping is common seems far smaller than has been presented in the past. One public comment submitted in 2018 in response to the proposed recission of the 2014 Prior Rule noted that the only occupations in which there are GE programs where tipping might be occurring are in cosmetology, massage therapy, bartending, acupuncture, animal grooming, and tourism/travel services.[99] While there are other types of occupational categories where tipping does occur, such as restaurant service, these are not areas where the students are being specifically trained to work in programs that might be eligible for title IV, HEA support. For instance, the GE programs related to restaurants are in culinary arts, where chefs are less likely to receive tips.

Even in fields of work that involve title IV, HEA support and where one might suppose that unreported income is substantial, research will not necessarily support that guesswork. For example, recent research indicates that making reasonable adjustments to the earnings of cosmetology programs to account for tips would have minimal effects on whether a program passes the GE metrics. Looking at programs that failed the metrics in the 2014 Prior Rule for GE programs, researchers estimated that underreporting of tipped income likely constituted just 8 percent of earnings and therefore would only lead to small changes in the number and percentage of cosmetology programs that pass or fail the 2014 rule.[100] To reiterate, the Department is interested in a reasonable assessment of available information without overreliance on any one piece of evidence. So, although the above study's estimate of only 8 percent underreporting is noteworthy for its small size, we are not convinced that it would be reasonable to convert that particular number into any flat rule related to disclosures, warnings, acknowledgments, or program eligibility.

Instead, we consider such studies alongside a range of other factors to reach decisions in this rulemaking. In particular, we note again the change in timing for measuring earnings from the 2014 Prior Rule that leads to an increase in earnings for all programs that is higher than this estimate of underreporting, as further explained in the discussion of proposed § 668.403. Thus the proposed rule already includes safeguards against asserted underestimates of earnings. We also seek to avoid the perverse incentives that would be created by making the rule's application more lenient for programs in proportion to how commonly their graduates unlawfully underreport their incomes. We do not believe that taxpayer-supported educational programs should, in effect, receive credit when their graduates fail to report income for tax purposes. That position, even if it were fiscally sustainable, would incentivize institutions to discourage accurate reporting of earnings among program graduates—at the ultimate expense of taxpayers. Given the career training focus for these programs, we also believe that the institutions providing that training can emphasize the importance of reporting income accurately, not only as a legal obligation but also to ensure that long-term benefits from Social Security are maximized.

In summary, the Department believes that the consistency and reliability benefits of using IRS earnings data would warrant reliance upon these average program earnings without further adjustments beyond those adopted in this proposed rule. This is the same approach used for the calculation of income—including tipped income that is lawfully reported to the IRS—for other title IV, HEA program administration purposes, such as determining eligibility for funds and the payment amounts under various income-driven repayment plans.

Determination of the Debt to Earnings Rates and Earnings Premium Measure (§ 668.406)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.406 to require the Department to notify institutions of their program value transparency metrics and outcomes and, in the case of a GE program, to notify the institution if a failing program would lose title IV, HEA eligibility under proposed § 668.603. For each award year for which the Department calculates D/E rates and the earnings premium measure for a program, the Department would issue a notice of determination informing the institution of: (1) The D/E rates for each program; (2) The earnings premium measure for each program; (3) The Department's determination of whether each program is passing or failing, and the consequences of that determination; (4) For a non-GE program, whether the student acknowledgement would be required under proposed § 668.407; (5) For a GE program, whether the institution would be required to provide

[97] Stephanie Riegg Cellini and Kathryn J. Blanchard, ''Hair and taxes: Cosmetology programs, accountability policy, and the problem of underreported income,'' Geo. Wash. Univ. (Jan. 2022), *www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf.*

[98] For further discussion on the Department's experience with alternate earnings appeals, see below at § 668.603.

[99] *www.regulations.gov/comment/ED-2018-OPE-0042-13794.*

[100] *www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf.*

the student warning under proposed § 668.605; and (6) For a GE program, whether the program could become ineligible based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the program.

Reasons: Proposed § 668.406 would establish the Department's administrative process to determine, and notify an institution of, a program's final financial value transparency measures. The notice of determination will inform the institution of its program outcomes so that it can provide prompt information to students, including warnings as required under proposed § 668.605, and take actions necessary to improve programs with unacceptable outcomes.

Student Disclosure Acknowledgments (§ 668.407)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.407 to require acknowledgments from current and prospective students if an eligible non-GE program leads to high debt outcomes based on its D/E rates, to specify the content and delivery parameters of such acknowledgments, and to require students to provide the acknowledgments prior to the disbursement of title IV, HEA funds. Additional warning and acknowledgment requirements would also apply to GE programs at risk of a loss of title IV, HEA eligibility, as further detailed in proposed § 668.605.

Under proposed changes to § 668.43, an institution would be required to distribute information to students and prospective students, prior to enrollment, about how to access a disclosure website maintained by the Secretary. The disclosure website would provide information about the program, including the D/E rates and earnings premium measure, when available. For eligible non-GE programs, for any year for which the Secretary notifies an institution that the eligible non-GE program is associated with relatively high debt burden for the year in which the D/E rates were most recently calculated by the Department, proposed § 668.407 would require students to acknowledge viewing these informational disclosures prior to receiving title IV, HEA funds. This acknowledgment would be facilitated by the Department's disclosure website and required before the first time a student begins an academic term after the program has had an unacceptable D/E rate.

In addition, an institution could not enroll, register, or enter into a financial commitment with the prospective student sooner than three business days after the institution distributes the information about the disclosure website maintained by the Secretary to the student. An institution could not disburse title IV, HEA funds to a prospective student enrolling in a program requiring an acknowledgment under this section until the student provides the acknowledgment. We would also specify that the acknowledgment would not otherwise mitigate the institution's responsibility to provide accurate information to students, nor would it be considered as evidence against a student's claim if the student applies for a loan discharge under the borrower defense to repayment regulations at 34 CFR part 685, subpart D.

The Department is aware that in some cases, students may transfer from one program to another, or may not immediately declare a major upon enrolling in an eligible non-GE program. We welcome public comments about how to best address these situations with respect to acknowledgment requirements. The Department also understands that many students seeking to enroll in non-GE programs may place high importance on improving their earnings, and would benefit if the regulations provided for acknowledgements when a non-GE program is low-earning. We further welcome public comments on whether the acknowledgement requirements should apply to all programs, or to GE programs and some subset of non-GE programs, that are low-earning.

The Department is also aware that some communities face unequal access to postsecondary and career opportunities, due in part to the lasting impact of historical legal prohibitions on educational enrollment and employment. Moreover, institutions established to serve these communities, as reflected by their designation under law, have often had lower levels of government investment. The Department welcomes comments on how we might consider these factors, in accord with our legal obligations and authority, as we seek to ensure that all student loan borrowers can make informed decisions and afford to repay their loans.

Reasons: Through the proposed regulations the Department intends to establish a framework for financial value transparency for all programs, regardless of whether they are subject to the accountability framework for GE programs. To help achieve these goals, in proposed § 668.407, we set forth acknowledgment requirements for students, which institutions that benefit from title IV, HEA must facilitate by providing links to relevant sources, based on the results of their programs under the metrics described in § 668.402. To enhance the clarity of these proposed regulations, we discuss the warning requirements for GE programs separately under proposed § 668.605.

In the 2019 Prior Rule rescinding the GE regulation, the Department stated that it believed that updating the College Scorecard would be sufficient to achieve the goals of providing comparable information on all institutions to students and families as well as the public. While we continue to believe that the College Scorecard is an important resource for students, families, and the public, we do not think it is sufficient for ensuring that students are fully aware of the outcomes of the programs they are considering before they receive title IV, HEA funds to attend them. One consideration is that the number of unique visitors to the College Scorecard is far below that of the number of students who enroll in postsecondary education in a given year. In fiscal year 2022, we recorded just over 2 million visits overall to the College Scorecard. This figure includes anyone who visited, regardless of whether they or a family member were enrolling in postsecondary education. By contrast, more than 16 million students enroll in postsecondary education annually, in addition to the family members and college access professionals who may also be assisting many of these individuals with their college selection process. Second, research has shown that information alone is insufficient to influence students' enrollment decisions. For example, one study found that College Scorecard data on cost and graduation rates did not impact the number of schools to which students sent SAT scores.[101] The authors found that a 10 percent increase in reported earnings increased the number of score sends by 2.4 percent, and the impact was almost entirely among well-resourced high schools and students. Third, the Scorecard is intentionally not targeted to a specific individual because it is meant to provide comprehensive information to anyone searching for a postsecondary education. By contrast, a disclosure would be a more

[101] *onlinelibrary.wiley.com/doi/abs/10.1111/ecin.12530.*

personalized delivery of information to a student because it would be based on the specific programs that they are considering. Requiring an acknowledgement under certain circumstances would also ensure that students see the information, which may or may not otherwise occur with the College Scorecard. Finally, we think the College Scorecard alone is insufficient to encourage improvements to programs solely through the flow of information indicated in the 2019 Final Rule. Posting the information on the Scorecard in no way guarantees that an institution would even be aware of the outcomes of their programs, and institutions have no formal role in acknowledging their outcomes. By contrast, with these proposed regulations institutions would be fully informed of the outcomes of all their programs and would also know which programs would be associated with acknowledgement requirements and which ones would not. The Department thus anticipates that these disclosures and acknowledgements will better achieve the goals of both delivering information to students and encouraging improvement than the approach outlined in the 2019 Rule did.

Under the proposed regulations, the Department would not publish specific text that institutions would use to convey acknowledgment requirements to students. We believe institutions are well positioned to tailor communications about acknowledgment requirements in a manner that best meets the needs of their students, and institutions would be limited in their ability to circumvent the acknowledgement requirement because the Department's systems would not create disbursement records until the student acknowledges the disclosure through the website maintained by the Secretary. To enhance the clarity of these proposed regulations, we discuss the warning requirements for GE programs separately under proposed § 668.605.

Similar to the 2014 Prior Rule, requiring that at least three days must pass before the institution could enroll a prospective student would provide a ''cooling-off period'' for the student to consider the information provided through the disclosure website without immediate and direct pressure from the institution, and would also provide the student with time to consider alternatives to the program either at the same institution or at another institution.

For both GE and non-GE programs, we propose to collect data, calculate results, and post results on both D/E and EP. That will make the information about costs, borrowing, and earnings outcomes widely available to the prospective students and the public. As outlined in subpart S, we use these same metrics to establish whether GE programs prepare students for gainful employment and are thus eligible to participate in Title IV, HEA programs, and due to the potential for loss of eligibility we require programs failing either metric to provide warnings and facilitate their students in acknowledging viewing the information before aid can be disbursed. For non-GE programs, we require students to acknowledge viewing the disclosure information when programs fail D/E, but not EP. While many non-GE students surely care about earnings, non-GE programs are more likely to have nonpecuniary goals. Requiring students to acknowledge low-earning information as a condition of receiving aid might risk conveying that economic gain is more important than nonpecuniary considerations. In contrast, students' ability to pursue nonpecuniary goals is jeopardized and taxpayers bear additional costs if students enroll in high-debt burden programs. Requiring acknowledgement of the D/E rates ensures students are alerted to risk on that dimension.

Reporting Requirements (§ 668.408)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.408 to establish institutional reporting requirements regarding Title IV-eligible programs offered by the institution and students who enroll in, complete, or withdraw from an eligible such programs, and to define the timeframe for institutions to report this information.

For each eligible program during an award year, an institution would be required to report: (1) Information needed to identify the program and the institution; (2) The name, CIP code, credential level, and length of the program; (3) Whether the program is programmatically accredited and, if so, the name of the accrediting agency; (4) Whether the program meets licensure requirements for all States in the institution's metropolitan statistical area, whether the program or prepares students to sit for a licensure examination in a particular occupation, the number of program graduates from the prior award year that take the licensure examination within one year (if applicable), and the number of program graduates that pass the licensure examination within one year (if applicable); (5) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds; and (6) Whether the program is a medical or dental program whose students are required to complete an internship or residency.

For each recipient of title IV, HEA funds, the institution would also be required to annually report at a student level: (1) The date each student initially enrolled in the program; (2) Each student's attendance dates and attendance status (*e.g.,* enrolled, withdrawn, or completed) in the program during the award year; (3) Each student's enrollment status (*e.g.,* full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program; (4) The total annual cost of attendance; (5) The total tuition and fees assessed for the award year; (6) The student's residency tuition status by State or region (such as in-state, in-district, or out-of-state); (7) The total annual allowance for books, supplies, and equipment; (8) The total annual allowance for housing and food; (9) The amount of institutional grants and scholarships disbursed; (10) The amount of other state, Tribal, or private grants disbursed; and (11) The amount of any private education loans disbursed, including private education loans made by the institution. In addition, if the student completed or withdrew from the program and ever received title IV, HEA assistance for the program, the institution would also be required to report: (1) The date the student completed or withdrew from the program; (2) The total amount, of which the institution is or should reasonably be aware, that the student received from private education loans for enrollment in the program; (3) The total amount of institutional debt the student owes any party after completing or withdrawing from the program; (4) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; (5) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA cost of attendance for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses; and (6) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program. Institutions would also be required to report any additional information the Department may specify through a notice published in the **Federal Register**.

For GE programs, institutions would be required to report the above information, as applicable, no later than July 31 following the date these regulations take effect for the second through seventh award years prior to that date or, for medical and dental programs that require an internship or residency, July 31 following the date these regulations take effect for the second through eighth award years prior to that date. For eligible non-GE programs, institutions would have the option either to report as described above, or to initially report only for the two most recently completed award years, in which case the Department would calculate the program's transitional D/E rates and earnings premium measure based on the period reported. After this initial reporting, for each subsequent award year, institutions would be required to report by October 1 following the end of the award year, unless the Department establishes different dates in a notice published in the **Federal Register**. If, for any award year, an institution fails to provide all or some of the information described above, the Department would require the institution to provide an acceptable explanation of why the institution failed to comply with any of the reporting requirements.

Reasons: Certain student-specific information is necessary for the Department to implement the provisions of proposed subpart Q, specifically to calculate the D/E rates and the earnings premium measure for programs under the program value transparency framework. This information is also needed to calculate many of the disclosures under proposed § 668.43(d), including the completion rates, program costs, median loan debt, median earnings, and debt-to-earnings, among other disclosures. As discussed in ''§ 668.401 Scope and purpose,'' the proposed reporting requirements are designed, in part, to facilitate the transparency of program outcomes and costs by: (1) Ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about programs to inform student and prospective student decision-making; (2) Helping the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and (3) Allowing institutions to see which programs produce exceptional results for students so that those programs may be emulated.

The proposed regulations would require institutions to report the name, CIP code, credential level, and length of the program. Although program completion times can sometimes vary due to differences in student enrollment patterns, to provide the most meaningful information possible for prospective students, we refer in the proposed regulations, particularly in the reporting and disclosure requirements in § 668.43 and § 668.408, to the ''length of the program.'' The ''length of the program'' would be defined as the amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

In proposed additions to the general definitions at § 668.2, we would establish separate definitions for ''CIP code'' and ''credential level.'' The proposed definition of ''CIP code'' largely mirrors the definition in the 2014 Prior Rule. The proposed definition of ''credential level'' would also be similar to past definitions, and the proposed definition includes a listing of the credential levels for use in the definition of a program.

Reporting whether a program is programmatically accredited along with the name of the relevant accrediting agency would allow the Department to include that information in disclosures. Clear and consistent information about programmatic accreditation would aid current and prospective students in assessing the value of the program and in comparing the program against others, and such information about programmatic accreditation is not readily available to students.

Reporting whether a program meets relevant licensure requirements for the States in the institution's metropolitan statistical area or prepares students to sit for a licensure examination in a particular occupation would allow the Department to provide current and prospective students with invaluable information about the career outcomes for graduates of the program and support informed enrollment decisions. In recent years, some institutions have misrepresented the career and employment outcomes of programs, including the eligibility of program graduates to sit for licensure examinations, resulting in borrower defense claims.[102] We remain concerned about the ongoing potential for such misrepresentations, and believe that reporting and disclosing information about a program's licensure outcomes—such as share of recent program graduates that sit for and pass licensure exams—will help to reduce the number of future borrower defense claims that are approved.

Reporting the total number of students enrolled in a program, including both recipients and non-recipients of title IV, HEA funds, would allow the Department to calculate and disclose the percentage of students who receive Federal student aid and Federal student loans. This information would assist current and prospective students in comparing programs and institutions and would assist in making better informed enrollment decisions.

Reporting whether a program is a medical or dental program that includes an internship or residency is necessary because proposed § 668.403 would use a different cohort period in calculating the D/E rates for those programs. See ''§ 668.403 Calculating D/E rates'' for a discussion of why these programs would be evaluated differently.

The dates of a student's attendance in the program and the student's attendance status (*i.e.,* completed, withdrawn, or still enrolled) and enrollment status (*i.e.,* full time, three-quarter time, half time, and less than half time) would be needed by the Department to attribute the correct amount of a student's title IV, HEA program loans that would be used in the calculation of a program's D/E rates. These items would also be needed to identify the program's former students for inclusion on the list submitted to a Federal agency with earnings data to determine the program's median annual earnings for the purpose of the D/E rates and earnings premium calculations, and the borrowers who would be considered in the calculation of the program's completion rate, withdrawal rate, loan repayment rate, median loan debt, and median earnings.

We would require the amount of each student's private education loans and institutional debt, along with the student's title IV, HEA program loan debt, institutional grants and scholarships, and other government or private grants disbursed, to determine the debt portion of the D/E rates. We would also require institutions to report the total cost of attendance, the cost of tuition and fees, and the cost of books, supplies, and equipment to determine the program's costs. We would need both of these amounts to calculate the D/E rates because, as provided under proposed § 668.403, in determining a program's median loan amount, each

[102] *studentaid.gov/announcements-events/borrower-defense-update.*

student's loan debt would be capped at the lesser of the loan debt or the program costs, less any institutional grants and scholarships. We recognize that some institutions with higher overall tuition costs offer significant institutional financial assistance or discounts that reduce the net cost for students to enroll in their programs. Requiring institutions to report institutional grants and scholarships would allow the Department to take such financial assistance into consideration when measuring debt outcomes, would encourage institutions to provide financial assistance to students, and would ultimately result in a fairer metric and more consistent comparisons of the actual debt burdens associated with different programs.

For GE programs, institutions would be required to initially report for the second through seventh prior award years, and for the second through eighth prior award years for medical and dental programs requiring an internship or residency. This reporting would ensure that the Department could calculate the D/E rates and the earnings premium measure under subpart Q and apply the eligibility outcomes under subpart S in as timely a manner as possible, thus protecting students and taxpayers through prompt oversight of failing GE programs. Much of the necessary information for GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. For example, the vast majority (88 percent) of public institutions operated at least one GE program and thus have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule, and nearly half (47 percent) of private non-profit institutions did as well. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. For example, 2,210 institutions provided very detailed student-level financial aid and other information as part of the 2017–18 National Postsecondary Student Aid Study, Administrative Collection (NPSAS:18–AC) collection, including 74 percent of all public institutions and 37 percent of all private non-profit institutions.[103] Since the latter are selected for inclusion randomly each NPSAS collection period, the number of institutions that have ever provided such data is much higher than this rate implies.

The proposed financial value transparency framework entails added reporting burden for institutions relative to the 2019 Prior Rule and the 2014 Prior Rule for some additional data items and for students in programs that are not covered by the GE accountability framework. The Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past for non-GE programs, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

The debt-to-earnings rates are intended to capture whether program completers' debt levels are reasonable in light of their earnings outcomes. Since earnings are observed with a lag, the most recent year's D/E rates necessarily involve the earnings and debt levels of individuals completing at least five or six years earlier. For GE programs, where the measures affect program eligibility, the Department believes it is important that debt and earnings measures are based on the same group of students. It might be, for example, that more recent cohorts of students have higher borrowing levels due to changes to curriculum that raised the costs of instruction and, as a result, the cost of tuition. These changes would ideally be reflected in improvements in students' earnings as well, but the D/E rates might not reflect that if the earnings data used for D/E were based on the older cohorts while debt measures are based on a more recent cohort.

For non-GE programs the transparency metrics do not affect a program's eligibility for Title IV, HEA programs. While it would be preferable to have more accurate information that is comparable across all programs to better support student choices, for non-GE programs the Department believes alleviating some institutional reporting burden justifies a temporary sacrifice in the quality of the D/E data reported during a transition period. For that reason, the Department proposes to offer institutions the option either to report past cohorts for eligible non-GE programs as otherwise required for GE programs, or to report for only the two most recently completed award years. If institutions opt to report only the most recently completed award years for an eligible non-GE program, we would calculate the program's transitional D/E rates and earnings premium based on the data reported. Transitional D/E rates would differ from those described in proposed § 668.403 by only considering Federal loan debt (no private or institutional loans) and by not capping the total debt based on direct costs minus institutional scholarships. Further, this debt would pertain to recent completers rather than those whose median earnings are available. We believe that the transitional metric, though missing data elements, will provide useful information to institutions that could be used to enhance their program offerings and improve student outcomes until more comprehensive data are available.

For those institutions that opt to or are required to complete the reporting on past cohorts, we recognize that the initial reporting deadline of July 31, 2024, may pose implementation challenges for institutions, who may experience difficulties compiling and reporting data within a month of the date these regulations become effective, particularly for institutions that offer many educational programs and may not have been subject to reporting under the 2014 Prior Rule or similar reporting related to the NPSAS. To assist institutions in preparing for this deadline and to ensure that institutions have sufficient time to submit their data for the first reporting period, the Department anticipates that, as with the 2014 Prior Rule, it would provide training in advance to institutions on the new reporting requirements, provide a format for reporting, and enable the Department's relevant systems to accept optional early reporting from institutions beginning several months prior to the July 31, 2024, deadline.

We propose to include a provision similar to the one from the 2014 Prior

[103] These tabulations compare the number of institutions providing enrollment lists in NPSAS 18–AC to the number of institutions in the 2019 Program Performance Data, described in the Regulatory Impact Analysis. The number of institutions represented in the final survey is lower. see Table B1 in Burns, R., Johnson, R., Lacy, T.A., Cameron, M., Holley, J., Lew, S., Wu, J., Siegel, P., and Wine, J. (2022). 2017–18 National Postsecondary Student Aid Study, Administrative Collection (NPSAS:18–AC): First Look at Student Financial Aid Estimates for 2017–18 (NCES 2021–476rev). U.S. Department of Education. Washington, DC: National Center for Education Statistics. Retrieved 1/30/2023 from *nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2021476rev.*

Rule requiring an institution to provide the Secretary with an explanation of why it has failed to comply with any of the reporting requirements. Because the Department would use the reported information to calculate the debt and earnings measures and the transparency disclosures, it is essential for the Secretary to have information about why an institution may not be able to report the information.

Some of the negotiators, particularly those representing postsecondary institutions, expressed unease that the proposed reporting may be burdensome. We understand these concerns, but we nonetheless believe that the benefits to students and to taxpayers derived from the reporting requirements under proposed subpart Q, which allow implementation of the proposed transparency and accountability frameworks, outweigh the costs associated with additional institutional burden. Institutions will also benefit from the reporting because the information would allow them to make targeted changes to improve their program offerings, and they would be able to promote their positive outcomes to potential students to assist in their recruiting efforts.

Most importantly, the Department believes these added reporting requirements will benefit students and taxpayers by providing new and more accurate information to make well-informed postsecondary choices. Multiple studies have shown that students and families are often making their postsecondary choices without sufficient information due to confusing and misleading financial aid offers.[104] The new reporting requirements will permit the Department to provide estimates of the net prices and total direct costs (tuition, fees, books, supplies, and equipment) and indirect costs students must pay to complete a program, and to tailor these estimates of yearly costs to students' financial background. Moreover, the data will allow estimates of the total amount students pay to acquire a degree, capturing variation in how long it takes for students to complete their degree. In some areas—including among graduate programs where borrowing levels have increased substantially in the last decade—this information will be the first systematic source of comparable data available for students and the general public to compare the costs and outcomes of different programs. This information should be beneficial to institutions as well, helping them to benchmark their tuition prices against similar programs at other institutions, and to keep their prices better aligned with the financial value their programs deliver for students.

Severability (§ 668.409)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.409 to establish severability protections ensuring that if any program accountability or transparency provision is held invalid, the remaining program accountability and transparency provisions, as well as other subparts, would continue to apply. Proposed § 668.409 would operate in conjunction with the severability provision in proposed § 668.606, which is discussed below and any other applicable severability provision throughout the Department's regulations.

Reasons: Through the proposed regulations we intend to (1) Establish measures that would distinguish programs that provide quality, affordable education and training to their students from those programs that leave students with unaffordable levels of loan debt in relation to their earnings or provide no earnings benefit from those who did not pursue a postsecondary degree or credential; and (2) Establish reporting and disclosure requirements that would increase the transparency of student outcomes so that accurate and comparable information is provided to students, prospective students, and their families, to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential; the public, taxpayers, and the Government, to help them better safeguard the Federal investment in these programs; and institutions, to provide them meaningful information that they could use to improve student outcomes in these programs.

We believe that each of the proposed provisions serves one or more important, related, but distinct, purposes. Each of the requirements provides value, separate from and in addition to the value provided by the other requirements, to students, prospective students, and their families; to the public; taxpayers; the Government; and to institutions. To best serve these purposes, we would include this administrative provision in the regulations to establish and clarify that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of any one provision should not affect the remainder of the provisions. Furthermore, proposed § 668.409 would operate in conjunction with the severability provision in proposed § 668.606 regarding GE program accountability. For ease of reference, here we offer an illustrative discussion for both of those severability provisions.

For example, under proposed subpart Q of part 668, a program must meet both the D/E rate and the earnings premium metric in order to pass the financial value transparency metrics. Each metric represents a distinctive measure of program quality, as we have explained elsewhere in this NPRM. Thus, if the D/E rate or the earnings premium metric is held invalid, the metric that was not held invalid could alone serve to help people distinguish, in its own distinctive way, programs that tend to provide relatively high quality and/or affordable education and training to their students from those programs that do not. Accordingly, the proposed rule does not provide that a program can pass the metrics by meeting only one of either the D/E metric or the earnings premium metric. The two metrics are aimed at distinct values, and they can operate independently of each other, in the sense that if one of these metrics is held invalid, the other metric could stand alone to help people distinguish programs on grounds that are relevant to many observers, applicable law, and sound policy. Although the Department believes that implementing both metrics is lawful and preferable for financial value transparency and for GE program accountability, implementing one or the other would be administrable and superior to implementing neither.

As another example, proposed § 668.605 would require institutions to provide various warnings to their students when a GE program fails the D/E rates or the earnings premium metric. If any or all of the student warning provisions are held invalid, the remainder of the rule can operate to provide measurements of financial value transparency even if there is no requirement that students must be warned when a GE program fails one of the metrics. The Department would retain other methods of disseminating information about GE and eligible non-GE programs, albeit methods that might not be as effective for and readily available to the relevant decision makers. Similarly, if a particular form of student warning is held invalid, the other warnings would still operate on their own to achieve the benefits of effectively informing as many students

[104] *www.newamerica.org/education-policy/policy-papers/decoding-cost-college/; https://www.gao.gov/products/gao-23-104708.*

as possible about a GE program's failing metrics.

In addition, the Department's ability to evaluate GE programs for title IV eligibility can operate compatibly with a wide range of options for disclosures, warnings, and acknowledgments about programs—and vice versa. Those information dissemination choices involve matters of degree that do not affect the operation of eligibility provisions. GE program eligibility can be determined without depending on one particular kind of information disclosure strategy, as long as the Department itself has the necessary information to make the eligibility determination. Likewise, a wide variety of valuable information can be disseminated in a variety of methods and formats for transparency purposes, regardless of how programs are evaluated for eligibility purposes.

Even if the invalidation of one part of the proposed rule would preclude the best and most effective regulation in the Department's considered view, the Department also believes that a wide range of financial value transparency options and GE program accountability options would be compatible with each other, justified on legal and policy grounds compared to loss of the entire rule, and could be implemented effectively by the Department. The same principle applies to the relationship of the provisions of subparts Q and S of part 668 to other subparts in this rule and throughout title 34 of the CFR, as reflected in the severability provision that will apply to all provisions in part 668 in July, 2023.[105]

Gainful Employment (GE) Scope and Purpose (§ 668.601)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add subpart S, which would apply to educational programs that are required under the HEA to prepare students for gainful employment in a recognized occupation and would establish rules and procedures under which we would determine program eligibility. Proposed § 668.601 would establish this scope and purpose of the GE regulations in subpart S.

Reasons: The HEA requires some programs and institutions—generally all programs at proprietary institutions and most non-degree programs at public or private nonprofit institutions—to prepare students for gainful employment in a recognized occupation in order to access the title IV, HEA Federal financial aid programs. For many years, however, the standards by which institutions could demonstrate compliance with those requirements were largely undefined. In 2010, the Department conducted a rulemaking and issued regulations that established such standards for GE programs, based in part on the debt that graduates incurred in attending the program, relative to the earnings they received after completion. Following a court challenge to the 2011 Prior Rule and further negotiated rulemaking, the Department reevaluated and modified its position and it issued updated regulations in 2014 that, in part, omitted the GE metric that a district court had found inadequately reasoned and included a debt-to-earnings standard for GE programs. When the data were first released in January 2017, over 800 programs, collectively enrolling hundreds of thousands of students, did not pass the revised GE standards.

In 2019, the Department rescinded the 2014 Prior Rule in favor of an alternate approach that relied upon providing more consumer information via the College Scorecard. As further explained in the discussion of proposed § 668.401, we continue to believe that providing students with clear and accurate measures of the financial value of all programs is critical. Based, however, on studies of the College Scorecard's impact on higher education choices, and an extensive body of research on how to make consumer information most impactful, we propose several improvements involving disclosures and warnings to students to ensure they have this information, especially when enrolling in a program might harm them financially.

For programs that are intended to prepare students for gainful employment in a recognized occupation, however, further steps beyond information provisions are necessary and appropriate. The proposed rule therefore defines the conditions under which a program prepares students for gainful employment in a recognized occupation, and accordingly determines eligibility for title IV, HEA program funds, based on the financial value metrics described in § 668.402.

The Department proposes additional scrutiny for these programs for several reasons. First, informational interventions have been shown to be effective in shifting postsecondary choices when designed well, but it is now reasonably clear that those interventions are insufficient to fully protect students from financial harm.[106] The impact of information alone tends to be especially limited among more vulnerable populations, including groups that disproportionately enroll in gainful employment programs.[107] Analyses in the RIA show that 17.7 percent of all borrowers, accounting for nearly 33,374 borrowers in recent cohorts, who are in low-earning or high-debt-burden GE programs are in default on their student loans three years after repayment entry (compared with 10.1 percent of students nationwide). Removing Federal aid eligibility for such programs is necessary to prevent low-financial-value programs from continuing to harm these students—and from enjoying taxpayer support.

Second, the mission of gainful employment programs is to further students' career success. If such a program inflicts financial harm on its students, it is less likely that the value of the program can be redeemed by its performance in helping students achieve nonfinancial goals. In any event, this career focus is consistent with the different statutory definition of eligibility for such programs and the purposes of the relevant requirements for Federal support in title IV, HEA. As with other title IV, HEA educational programs, GE students are generally required to already possess a high school diploma or its equivalent. But unlike other title IV provisions, the statute's GE provisions also require that participating programs train students to *prepare* them for *gainful* employment in a *recognized occupation.*[108] Otherwise, taxpayer support is not authorized.

The relevant statutes thus indicate that GE programs are not meant to prepare postsecondary students for any job, irrespective of pay, debt burden, or qualifications. Instead, title IV's GE provisions indicate a purpose of Federal support for programs that actually train and prepare postsecondary students for jobs that they would be less likely to obtain without that training and preparation. Moreover, the recognized occupations for which GE programs must train and ''prepare'' postsecondary

[105] *See* 34 CFR 668.11 at 87 FR 65426, 65490 (Oct. 28, 2022).

[106] Baker, D., Cellini, S., Scott-Clayton, J., & Turner, L. (2021) Why information alone is not enough to improve higher education outcomes. Brookings Institution. Washington, DC.

[107] Gurantz, O., Howell, J., Hurwitz, M., Larson, C., Pender, M. and White, B. (2021), A National-Level Informational Experiment to Promote Enrollment in Selective Colleges. J. Pol. Anal. Manage., 40: 453–479. *doi.org/10.1002/pam.22262*; Hurwitz, M. and Smith, J. (2018), Student Responsiveness to Earnings Data in the College Scorecard. Econ Inq, 56: 1220–1243. *doi.org/10.1111/ecin.12530.*

[108] 20 U.S.C. 1002(b)(1)(A), (c)(1)(A). See also 20 U.S.C. 1088(b)(1)(A)(i), which refers to a recognized profession.

students cannot fairly be considered ''gainful'' if typical program completers end up with more debt than they can repay absent additional Federal assistance. Likewise, the Department is convinced that programs cannot fairly be said to ''prepare'' postsecondary students for ''gainful'' employment in recognized occupations if program completers' earnings fall below those of students who never pursue postsecondary education in the first place. Put simply, the HEA itself calls for special attention to GE programs when it comes to program eligibility. The relevant statutes and policy considerations may differ for transparency purposes, but, for GE program eligibility purposes, the Department must maintain certain limits on taxpayer support. We believe that, at minimum, it is permissible and reasonable for the Department to specify the eligibility standards for GE programs to include D/E rates and an earnings premium.

Third, an expanding body of academic research suggests that additional attention is appropriate for GE programs. Studies have documented persistent problems including poor labor market outcomes, high levels of borrowing, high rates of default, and low loan repayment rates. For example, research has found that some postsecondary certificates have very low or even negative labor market returns for their graduates.[109] This finding is echoed in the Department's Regulatory Impact Analysis, which shows that 23.1 percent of title IV, HEA enrollment in undergraduate certificate programs was in programs where the median earnings among graduates was less than that for high school graduates of a similar age. Studies have reported that students in programs at for-profit institutions, in particular, see much lower employment and earnings gains than students in programs at non-profit institutions, which is also shown in the Department's analysis.[110] Moreover, multiple studies have concluded that, accounting for differences in student characteristics, borrower outcomes like repayment rates and the likelihood of default are worse in the proprietary sector.[111] [112] Finally, research indicates that Federal accountability efforts that deny Title IV, HEA eligibility to low-performing institutions can be effective in driving improved student outcomes, particularly for students who attend (or would have attended) for-profit colleges.[113] [114]

We recognize that, since the prior rulemaking efforts in 2010, 2014, and 2019, some institutions have made positive changes to their GE programs, and some with many poor performing programs closed. Nonetheless, the data highlighted in the RIA demonstrate that more improvement in the sector is needed: for example, in the most recent data available (covering graduates in award years 2016 and 2017), nearly one fourth of all federally supported students enrolled in GE programs are in programs that fail either the D/E or EP metrics. Establishing accountability provisions will both prevent students from enrolling in programs where poor financial outcomes are the norm and would deter future bad actors seeking to create new programs that poorly serve students to capture Federal student aid revenue.

Gainful Employment Criteria (§ 668.602)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to establish a framework to determine whether a GE program is preparing students for gainful employment in a recognized occupation and thus may access title IV, HEA funds based upon its debt-to-earnings and earnings premium outcomes. Within this framework, we would consider a program to provide training that prepares students for gainful employment in a recognized occupation if the program: (1) Does not lead to high debt-burden outcomes under the D/E rates measure; (2) Does not lead to low-earnings outcomes under the earnings premium measure; and (3) Is certified by the institution as included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency in lieu of accreditation.

A GE program would, in part, demonstrate that it prepares students for gainful employment in a recognized occupation through passing D/E rates. The program would be ineligible if it fails the D/E rates measure in two out of any three consecutive award years for which the program's D/E rates are calculated. If it is not possible to calculate or issue D/E rates for a program for an award year, the program would receive no D/E rates for that award year and would remain in the same status under the D/E rates measure as the previous award year. For example, if a program failed the D/E rates measure in year 1, did not receive rates in year 2, passed the D/E rates measure in year 3, and failed the D/E rates measure in year 4, that program would be ineligible after year 4 because it failed the D/E rates measure in two out of three consecutive years for which D/E rates were calculated. This approach would avoid simply allowing a program to pass the D/E rates or earnings threshold premium measure when an insufficient number of students complete the program. For situations where it is not possible to calculate D/E rates for the program for four or more consecutive award years, the Secretary would disregard the program's D/E rates for any award year prior to the four-year period in determining the program's eligibility.

A GE program also would, in part, demonstrate that it prepares students for gainful employment in a recognized occupation through passing the earnings premium measure. The program would be ineligible if it fails the earnings premium measure in two out of any three consecutive award years for which the program's earnings premium is calculated. If it is not possible to calculate or publish the earnings

[109] Clive Belfield and Thomas Bailey, ''The Labor Market Returns to Sub-Baccalaureate College: A Review,'' March 2017. *Ccrc.tc.columbia.edu/media/k2/attachments/labor-market-returns-sub-baccalaureate-college-review.pdf*.

[110] Stephanie Cellini and Nick Turner, ''Gainfully Employed?: Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data,'' Journal of Human Resources (2019, vol. 54, issue 2). *Econpapers.repec.org/article/uwpjhriss/v_3a54_3ay_3a2019_3ai_3a2_3ap_3a342–370.htm*. Cellini, S.R. and Koedel, C. (2017), The Case for Limiting Federal Student Aid to For-Profit Colleges. J. Pol. Anal. Manage., 36: 934–942. *https://doi.org/10.1002/pam.22008*. Deming, D., Yuchtman, N., Abulafi, A., Goldin, C. & Katz, L. (2016). The Value of Postsecondary Credentials in the Labor Market: An Experimental Study. American Economic Review, 106 (3): 778–806. Armona, L., Chakrabarti, R., Lovenheim, M. (2022). Student Debt and Default: The Role of For-Profit Colleges. Journal of Financial Economics. 144(1) 67–92. Liu, V.Y.T., & Belfield, C. (2020). The Labor Market Returns to For-Profit Higher Education: Evidence for Transfer Students. Community College Review, 48(2), 133–155. *doi.org/10.1177/0091552119886659*.

[111] David Deming, Claudia Goldin, and Lawrence Katz, ''The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?'', *Journal of Economic Perspectives* (Volume 26, Number 1, Winter 2012). *www.aeaweb.org/articles?id=10.1257/jep.26.1.139*.

[112] Judith Scott-Clayton, ''What Accounts For Gaps in Student Loan Default, and What Happens After'', *Evidence Speaks Reports* (Volume 2, Number 57, June 2018). *www.brookings.edu/research/what-accounts-for-gaps-in-student-loan-default-and-what-happens-after/*.

[113] Stephanie Cellini, Rajeev Darolia, and Leslie Turner, ''Where Do Students Go When For-Profit Colleges Lose Federal Aid?'', *American Economic Journal: Economic Policy* (Volume 12, Number 2, May 2020). *www.aeaweb.org/articles?id=10.1257/pol.20180265*.

[114] Christopher Lau, ''Are Federal Student Loan Accountability Regulations Effective?'', *Economics of Education Review* (Volume 75, April 2020). *www.sciencedirect.com/science/article/pii/S0272775719303796?via%3Dihub*.

premium measure results for a program for an award year, the program would receive no result under the earnings threshold measure for that award year and would remain in the same status under the earnings threshold measure as the previous award year. For situations where it is not possible to calculate the earnings premium measure for the program for four or more consecutive award years, the Secretary would disregard the program's earnings premium for any award year prior to the four-year period in determining the program's eligibility.

The D/E rates and earnings premium measures capture different dimensions of program performance, and function independently in determining continued eligibility for Title IV student aid programs. For a program to be considered to provide training that prepares students for gainful employment in a recognized occupation, it must neither be deemed a high-debt-burden program in two of three consecutive years in which rates are published, nor be deemed a low-earnings program in two of three consecutive years in which rates are published.

Reasons: The financial value transparency and GE program accountability framework would both rely upon the same metrics that are described in proposed § 668.402. This framework would include two debt-to-earnings measures very similar to those used in the 2014 Prior Rule to assess the debt burden incurred by students who completed a GE program in relation to their earnings. This assessment would in part allow the Department to determine, consistent with the statute, whether a program is preparing students for gainful employment in a recognized occupation.

Under the proposed regulations, the first D/E rate is the *discretionary income rate,* which would measure the proportion of annual discretionary income—that is, the amount of income above 150 percent of the Poverty Guideline for a single person in the continental United States—that students who complete the program are devoting to annual debt payments. The second rate is the *annual earnings rate,* which would measure the proportion of annual earnings that students who complete the program are devoting to annual debt payments. A program would pass the D/E rates measure by meeting the standards of either of the two metrics (the discretionary D/E rate or the annual D/E rate) as discussed in more detail under proposed § 668.402. As we have discussed elsewhere in this NPRM, the Department cannot reasonably conclude that a program meets the statutory obligation to prepare students for gainful employment in a recognized occupation if the program leads to unacceptable debt outcomes by failing both of the D/E rates two out of three consecutive years in which the program is measured.

While D/E rates would help identify GE programs that burden students who complete the programs with unsustainable debt, the D/E rates calculation does not, on its own, adequately capture poorly performing GE programs with low costs, or in which few or no students borrow. Such programs may not necessarily encumber completers with large debt loads, but the programs may nonetheless fail to yield sufficient employment outcomes to justify Federal investment in the program. Even small debt loads can be unsustainable for some borrowers, as demonstrated by the estimated default rates among programs that would pass the D/E rates metric but would fail the earnings premium metric. Again and as discussed elsewhere in this NPRM, the Department has concluded that a GE program does not prepare students for gainful employment if the median earnings of the program's completers (that is, more than half of students completing the program) do not exceed the typical earnings of those who only completed the equivalent of a secondary school education.

The addition of the earnings premium metric to the D/E accountability framework of the 2014 Prior Rule is motivated by several considerations.[115] First, there is increasing concern among the public that some higher education programs are not ''worth it'' and do not promote economic mobility. While the D/E measure identifies programs where debt is high relative to earnings, students and families use their time and their own money in addition to the amount they borrow to finance their studies. Several recent studies (referenced in the RIA) support adding an earnings premium metric to help ensure that students benefit financially from their career training studies.[116] We also note in the RIA that programs with very low earnings, but low enough debt levels that they pass the D/E metric, nonetheless have very high default rates. In that sense, the earnings premium measure provides some added protection to borrowers with relatively low balances, but earnings so low that even low levels of debt payments are unaffordable. While the earnings premium provides additional protection to borrowers, it measures a distinct dimension of program performance—*i.e.,* the extent to which the program helps students attain a minimally acceptable level of earnings—from the D/E metrics.

The earnings premium measure would address this issue by requiring the Department to determine whether the median annual earnings of the completers of a GE program exceeds the median earnings of students with at most a high school diploma or GED. Accordingly, the earnings premium measure would supplement the D/E rates measure by identifying programs that may pass the D/E rates measure because loan balances of completers are low but nonetheless do not provide students or taxpayers a return on the investment in career training.

The Department proposes tying ineligibility to the second failure in any three consecutive award years of either the debt-to-earnings rates or the earnings premium measure because it prevents against one aberrantly low performance year resulting in the loss of title IV, HEA program fund eligibility. Additionally, we chose not to use a longer time horizon to avoid a scenario in which a prior result is no longer reflective of current performance of a program. A longer time horizon would also allow poorly performing programs to continue harming students and the integrity of the title IV, HEA programs.

As under the 2014 Prior Rule, the Department proposes a third component to ensure that GE programs meet the statutory requirement of providing training that prepares students for gainful employment in a recognized occupation: that the program meets applicable accreditation or State authorizing agency standards for the approval of postsecondary vocational education. These accrediting agency and

[115] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see above at [TK—preamble general introduction, legal authority], at [TK—transparency, around p.150], and at [TK—method for calculating metrics, around p.180]. The discussion here concentrates on GE program eligibility.

[116] See for example Jordan D. Matsudaira and Lesley J. Turner. ''Towards a framework for accountability for federal financial assistance programs in postsecondary education.'' The Brookings Institution. (2020) *www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner.pdf*; Stephanie R. Cellini and Kathryn J. Blanchard, ''Using a High School Earnings Benchmark to Measure College Student Success Implications for Accountability and Equity.'' The Postsecondary Equity and Economics Research Project. (2022). *www.peerresearchproject.org/peer/research/body/2022.3.3–PEER_HSEarnings-Updated.pdf*; and Michael Itzkowitz. ''Price to Earnings Premium: A New Way of Measuring Return on Investment in Higher Education.'' Third Way. (2020). *https://www.thirdway.org/report/price-to-earnings-premium-a-new-way-of-measuring-return-on-investment-in-higher-ed.*

State requirements are often gatekeeping conditions that a student must meet if they want to work in the occupation for which they are being prepared. For instance, many health care professions require completion of an approved program before a student can register to take a licensing examination. The Department cannot reasonably conclude that a program meets the statutory obligation to prepare graduates for gainful employment in a recognized occupation if the program lacks the necessary approvals needed for a student to have a possibility to work in that occupation.

Ineligible Gainful Employment Programs (§ 668.603)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.603 to define the process by which a failing GE program would lose title IV, HEA eligibility. If the Department determines that a GE program leads to unacceptable debt or earnings outcomes, as calculated in proposed § 668.402 for the length of time specified in § 668.602, the GE program would become ineligible for title IV, HEA aid. The ineligible GE program's participation in the title IV, HEA programs would end upon the institution notifying the Department that it has stopped offering the program; issuance of a new Eligibility and Certification Approval Report (ECAR) that does not include that program; the completion of a termination action of program eligibility under subpart G of part 668; or a revocation of program eligibility if the institution is provisionally certified. If the Department initiates a termination action against an ineligible GE program, the institution could appeal that action, with the hearing official limited to determining solely whether the Department erred in the calculation of the program's D/E rates or earnings premium measure. The hearing official could not reconsider the program's ineligibility on any other basis.

Though not discussed in this section, we also propose in § 668.171 to add a new mandatory financial responsibility trigger that would require an institution to provide financial protection if 50 percent of its title IV, HEA funds went to students enrolled in programs that are deemed failing under the metrics described in proposed § 668.602.

Proposed § 668.603 would also establish a minimum period of ineligibility for GE programs that lose eligibility by failing the D/E rates or the earning premium measure in two out of three years, and for GE programs at risk of a loss of eligibility that an institution voluntarily discontinues. As under the 2014 Prior Rule, an institution could not seek to reestablish the eligibility of a GE program that lost eligibility until three years following the date the program lost eligibility under proposed § 668.603. Similarly, an institution could not seek to reestablish eligibility for a failing GE program that the institution voluntarily discontinued, or to establish eligibility for a substantially similar program with the same 4-digit CIP prefix and credential level, until three years following the date the institution discontinued the failing program. Following this period of ineligibility, such a program would remain ineligible until the institution establishes the eligibility of that program through the process described in proposed § 668.604(c).

Reasons: For troubled GE programs that do not improve, the eventual loss of eligibility protects students by preventing them from incurring debt or using up their limited grant eligibility to enroll in programs that have consistently produced poor debt or earnings outcomes. Codifying in the regulations when and how the Department will end an ineligible GE program's participation in the title IV, HEA programs would provide additional clarity and transparency to institutions and the public as to the Department's administrative procedures.

The paths to ineligibility listed in § 668.603(a) represent the main ways that an academic program ceases participating in the title IV, HEA programs. Institutions can and of course do regularly cease offering programs, but do not always formally notify the Department when that occurs. The list of programs on an institution's ECAR serves as the main repository that tracks which eligible programs an institution offers, so removing a program from that document clearly establishes that it is no longer eligible for aid. In cases where an institution is provisionally certified the process for removing programs is more streamlined, as a provisional status indicates the Department has concerns about the institution's administration of the title IV, HEA programs. Finally, if none of these other events occur, the Department would initiate an action under part 668, subpart G, the section of the Department's regulations that governs the process for a limitation, suspension, or termination action. Given that a program becoming ineligible for title IV, HEA aid is a form of limitation, the Department believes that subpart G is the appropriate procedure to follow.

As further described under the Financial Responsibility section of this proposed rule, the Department is also proposing to add a new mandatory trigger in § 668.171 that would require the institution to provide financial protection to the Department if 50 percent of its title IV, HEA volume went to students enrolled in failing GE programs. This would ensure that taxpayers are protected while any ineligibility process continues in the instances in which the majority of an institution's aid dollars become ineligible in the next academic year, which could be substantially destabilizing. In addition, the 50 percent threshold would protect institutions from the requirement to provide financial protection to the Department in instances where only programs with very small title IV, HEA volume are at risk of aid ineligibility through failing the GE metrics.

Proposed § 668.603(b) would also clearly define the process and circumstances under which an institution could appeal a program eligibility termination action taken against an ineligible GE program. Specifically, the proposed regulations would allow appeals only on the basis that the Department erred in its calculation of the program's D/E rates or earnings threshold measure. As further discussed under proposed § 668.405, this is a change from the 2014 Prior Rule, which provided more options for institutions to submit challenges and appeals during the process of establishing final GE program rates. However, these options added significant burden and complexity for institutions, including an alternative earnings appeal process that was partially invalidated in Federal litigation.[117] As a result, the Department attempted to make case-by-case judgments about when reported earnings data should be replaced with data submitted by an institution. The prior appeals process ultimately resulted in delayed accountability for institutions and diminished protections for students and the public. Limiting appeals to errors of calculation would simplify the process and reduce administrative burden on the Department and institutions alike by focusing squarely on the circumstances most likely to support a prevailing appeal.

Several additional considerations inform our decision to not include a

[117] *Am. Ass'n of Cosmetology Schs.* v. *DeVos*, 258 F. Supp. 3d 50, 76–77 (D.D.C. 2017).

process for appealing the earnings data for programs.[118] First, new research is now available. A 2022 study concluded that the alternate earnings appeals submitted to the Department claimed to show earnings that were implausibly high—on average, 73 percent higher than Social Security Administration (SSA) earnings data under the 2014 Prior Rule, and 82 percent higher for cosmetology programs. The study proceeded to report that the underreporting of tipped income for cosmetologists and hairdressers, based on estimates from IRS data, is likely just 8 percent of SSA earnings.[119] Again, the Department's goal is a reasonable assessment of available evidence and not overreliance on any one source. That said, numbers such as those above give us serious pause, combined with other considerations.

Those other considerations include the Department's observations of the information provided in the earlier alternate earnings appeals process, which likewise suggest that the appeals had little value in improving the assessment of whether programs' ''true'' debt-to-earnings (or earnings) levels met the GE criteria. We agree that the earnings reported in appeals submitted by institutions seem implausibly high. And although there might be more than one possible explanation for those results, such as the sequence in which appeals were processed, the uncertainties that surround such appeals present another reason against reinstituting them now. There was no simple or easily identifiable test for evaluating appeals, and therefore there is no easy way to evaluate the results in hindsight. In addition, institutions had incentives to collect and show data that cast their programs in the best light within the administrative proceedings, whatever the applicable standard for reviewing appeals. Those structural complications seem difficult to resolve.

Moreover, offering those appeals certainly entailed costs for the Department and for others. The 341 appeals that were filed required substantial Department staff time to process. That administrative cost concern alone would not necessarily warrant a negative evaluation of an appeals process that had substantial and demonstrable value. However, given difficulties institutions experienced in obtaining and compiling earnings data, along with frequent issues involving statistical accuracy and student privacy due to small sample sizes, the Department has concluded that any evidentiary value afforded by the earnings appeals were more than outweighed by the administrative burden and costs incurred by both institutions and the Department.

As well, we have reason to question the value of appeals to many potentially interested parties. The difference between the 882 programs for which institutions submitted notices of intent to appeal when compared to the 341 appeals that were actually submitted suggests that institutions may often have concluded that the alternative earnings appeal process did not warrant the necessary investment of time and effort—or perhaps the initially supposed difference in graduates' earnings was not as significant as anticipated. And in rescinding the 2014 GE Prior Rule in 2019, the Department's reasoning focused on a deregulatory policy choice based on circumstances at that time rather than the desirability of appeals. In its brief discussion of unreported income in response to comments, the Department did not ascribe any value to the alternate earnings appeals process in addressing unreported income.[120] In addition to the unreliability of the earnings appeals that were previously submitted, as further discussed in our analysis of proposed § 668.405 above, we note again that IRS earnings are used in multiple ways within the Department's administration of the Federal student aid programs. Those uses include establishing student aid eligibility for grants and loans, and setting loan payment amounts when students enroll in income-driven loan repayment plans. We believe it is reasonable for us to use the same source for average program earnings for the metrics that we propose here.

We do propose a narrower and more objective form of appeal, however. As noted above, under this proposed rule an institution could only appeal a termination action if the Department erred in calculating a GE program's D/E rates or earnings premium. The appeal of the termination action would not include the underlying students included in the measures because institutions would already have an opportunity to correct the completer list they submit to the Department as described under proposed § 668.405(b). The proposed regulations would also establish a three-year waiting period before an ineligible or voluntarily discontinued program could regain eligibility. This waiting period is intended to protect the interests of students, taxpayers, and the public by ensuring that institutions with failing or ineligible GE programs take meaningful corrective actions to improve program outcomes before seeking Federal support for duplicate or substantially similar programs using the same four-digit CIP prefix and credential level.

The Department selected a three-year period of ineligibility because it most closely aligns with the ineligibility period associated with failing the Cohort Default Rate, which is the Department's longstanding primary outcomes-based accountability metric. Under those requirements, an institution that becomes ineligible for title IV, HEA support due to high default rates cannot reapply for approximately three award years.

Certification Requirements for GE Programs (§ 668.604)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.604 to require transitional certifications for existing GE programs, as well as certifications when seeking recertification or the approval of a new or modified GE program. An institution would certify that each eligible GE program it offers is approved, or is otherwise included in the institution's accreditation, by its recognized accrediting agency. Alternatively, if the institution is a public postsecondary vocational institution, it could certify that the GE program is approved by a recognized State agency for the approval of public postsecondary vocational education, in lieu of accreditation. Either certification would require the signature of an authorized representative of the institution and, for a proprietary or private nonprofit institution, an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution.

For each of its currently eligible GE programs, an institution would need to provide a transitional certification no later than December 31 of the year in which this regulation takes effect, as an addendum to the institution's PPA with the Department. Failure to complete the transitional certification would result in discontinued participation in the Title IV, HEA programs for the institution's

[118] For further discussion of unreported income, see above at [TK].

[119] The study is Stephanie Riegg Cellini and Kathryn J. Blanchard, ''Hair and taxes: Cosmetology programs, accountability policy, and the problem of underreported income,'' Geo. Wash. Univ. (Jan. 2022), *www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf.* PEER_HairTaxes-Final.pdf (peerresearchproject.org). Note that tips included on credit card payments to a business are more likely to be reported, and it is reasonable to expect that many workers are complying with the law to include tips in their reported income.

[120] 84 FR 31392, 31409–10 (2019).

GE programs. Institutions would also be required to provide this certification when seeking recertification of eligibility for the title IV, HEA programs, and the Department would not recertify the GE program if the institution fails to provide the certification. A transitional GE certification would not be required if an institution makes a GE certification in a new PPA through the recertification process between July 1 and December 31 of the year in which this regulation takes effect. An institution must update its GE certification within 10 days if there are any changes in the approvals for a GE program, or other changes that make an existing certification no longer accurate, or risk discontinuation of title IV, HEA participation for that GE program.

To establish eligibility for a GE program, the institution would be required to update the list of its eligible programs maintained by the Department to add that program. An institution may not update its list of eligible programs to include a GE program that was subject to a three-year loss of eligibility under § 668.603(c) until that three-year period expires. In addition, an institution may not update its list of eligible programs to add a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or that became ineligible because of a failure to satisfy the required D/E rates, earnings premium measure, or both.

Reasons: Through these certification requirements, institutions would be required to assess their programs to determine whether they meet these minimum standards. The Department cannot reasonably consider that a program meets the statutory obligation to prepare graduates for gainful employment in a recognized occupation if the program cannot meet the basic certification and licensure requirements for that occupation. We believe that any student attending a program that does not meet all applicable accreditation and State or Federal licensing requirements would experience difficulty or be unable to secure employment in the occupation for which he or she received training and, consequently, would likely struggle to repay the debt incurred for enrolling in that program. The certification requirements are intended to help prevent such outcomes by requiring the institution to proactively assess whether its programs meet those requirements and to affirm to the Department when seeking eligibility that the programs meet those standards. The certification requirements are therefore an appropriate condition that programs must meet to qualify for title IV, HEA program funds, as they address the concerns about employability outcomes underlying the gainful employment eligibility provisions of the HEA.

As we have proposed in changes to § 668.14, these certifications must be signed by an authorized representative of the institution and, for a proprietary or private nonprofit institution, an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution. Because of these signature requirements, an institution would have to carefully assess whether each offered GE program meets the necessary requirements, and we expect that institutions would make this self-assessment in good faith and after appropriate due diligence.

In addition, these certification requirements would help make certain that the Department has an accurate list of all GE programs offered by an institution, and that the list is regularly updated as the institution adds or subtracts programs. This accurate listing of programs will in turn ensure that the institution and the Department can provide required disclosures and warnings to students in a timely and effective manner.

The certification requirements would also ensure that an institution cannot add a program that would be ineligible under the conditions in proposed § 668.603.

Warnings and Acknowledgments (§ 668.605)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.605 to require notifications to current and prospective students who are enrolled in, or considering enrolling in, a GE program if that program could lose title IV, HEA eligibility based on its next published D/E rates or earnings premium; to specify the content and delivery requirements of such notifications; and to require students to acknowledge seeing the notifications when applicable before receiving Title IV aid. An institution would be required to provide a warning to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates or earnings premium measure for the next award year for which those metrics are calculated. The warning would be the only substantive content contained in these written communications. The proposed warning for prospective and current students would include a warning, as specified in a notice published in the **Federal Register**, that the program has not passed standards established by the U.S. Department of Education based on the amounts students borrow for enrollment in the program and their reported earnings; the relevant information to access a disclosure website maintained by the Department; and that the program could lose access to title IV, HEA funds in the subsequent award year. The warning would also include a statement that the student must acknowledge having seen the warning through the disclosure website before the institution may disburse any title IV, HEA funds. In addition, warnings provided to students enrolled in GE programs would include (1) A description of the academic and financial options available to continue their education in another program at the institution in the event that the program loses title IV, HEA eligibility, including whether the students could transfer academic credit earned in the program to another program at the institution and which course credit would transfer; (2) An indication of whether, in the event of a loss of eligibility, the institution will continue to provide instruction in the program to allow students to complete the program; (3) An indication of whether, in the event of a loss of eligibility, the institution will refund the tuition, fees, and other required charges paid to the institution for enrollment in the program; and (4) An explanation of whether, in the event that the program loses eligibility, the students could transfer credits earned in the program to another institution through an established articulation agreement or teach-out.

In addition to providing the English-language warnings, the institution would be required to provide accurate translations of the English-language warning into the primary languages of current and prospective students with limited English proficiency.[121] The delivery timeframe and procedure for required warnings would depend upon whether the intended recipient is a current or prospective student. For current students, an institution would be required to provide the warning in

[121] Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance. It requires that recipients of Federal funding take reasonable steps to provide meaningful access to their programs or activities to individuals with limited English proficiency (LEP), which may include the provision of translated documents to people with LEP.

writing to each student enrolled in the program no later than 30 days after the date of the Department's notice of determination, and to maintain documentation of its efforts to provide that warning. For prospective students, under proposed § 668.605, an institution must provide the warning to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or third party by one of the following methods: (1) Hand-delivering the warning and the relevant information to access the disclosure website as a separate document to the prospective student or third party individually, or as part of a group presentation; (2) Sending the warning and the relevant information to access the disclosure website to the primary email address used by the institution for communicating with the prospective student or third party about the program, with the stipulation that the warning is the only substantive content in the email and that the warning must be sent by a different method of delivery if the institution receives a response that the email could not be delivered; or (3) Providing the warning and the relevant information to access the disclosure website orally to the student or third party if the contact is by telephone. In addition, an institution could not enroll, register, or enter into a financial commitment with the prospective student sooner than three business days after the institution distributes the warning to the student. An institution could not disburse title IV, HEA funds to a prospective student enrolling in a program requiring a warning under this section until the student provides the acknowledgment described in this section. We also specify that the provision of a student warning or the student's acknowledgment would not otherwise mitigate the institution's responsibility to provide accurate information to students, nor would it be considered as evidence against a student's claim if the student applies for a loan discharge under the borrower defense to repayment regulations at 34 CFR part 685, subpart D.

Reasons: In proposed § 668.605, we set forth warning and acknowledgment requirements that would apply to institutions based on the results of their GE programs under the metrics described in § 668.402. A program that fails the D/E rates or earnings premium measure is at elevated risk of losing access to the title IV, HEA programs. Providing timely and effective warnings to students considering or enrolled in such programs is especially critical in allowing students to make informed choices about whether to enroll or continue in a program for which expected financial assistance may become unavailable.

In the 2019 Prior Rule rescinding the GE regulation, the Department stated that it believed that updating the College Scorecard would be sufficient to achieve the goals of providing comparable information on all institutions to students and families as well as the public. While we continue to believe that the College Scorecard is an important resource for students, families, and the public, we do not think it is sufficient for ensuring that students are fully aware of the outcomes of the programs they are considering before they receive title IV, HEA funds to attend them. One consideration is that the number of unique visitors to the College Scorecard is far below that of the number of students who enroll in postsecondary education in a given year. In fiscal year 2022, we recorded just over 2 million visits overall to the College Scorecard. This figure includes anyone who visited, regardless of whether they or a family member were enrolling in postsecondary education. By contrast, more than 16 million students enroll in postsecondary education annually, in addition to the number of family members and college access professionals who may also be assisting many of these individuals with their college selection process. Second, as noted in the discussion of proposed § 668.401 and in the RIA, research has shown that information alone is insufficient to influence students' enrollment decision. For example, one study found that College Scorecard data on cost and graduation rates did not impact the number of schools to which students sent SAT scores.[122] The authors found that a 10 percent increase in reported earnings increased the number of scores students sent to the school by 2.4 percent, though the impact was almost entirely among well-resourced high schools and students. Third, the Scorecard is intentionally not targeted to a specific individual because it is meant to provide comprehensive information to anyone searching for a postsecondary education. By contrast, a warning or disclosure would be a more personalized delivery of information to a student because it would be based on the programs that they are enrolled in or actively considering enrolling in. Making it a required disclosure would also ensure that students see the information, which may or may not otherwise occur with the College Scorecard. Finally, we think the College Scorecard alone is insufficient to encourage improvements to programs solely through the flow of information, in contrast to the 2019 Prior Rule. Posting the information on the Scorecard in no way guarantees that an institution would even be aware of the outcomes of their programs, and institutions have no formal role in acknowledging their outcomes. By contrast, with these proposed regulations institutions would be fully informed of the outcomes of all their programs and would also know which programs would be associated with warnings and which ones would not. The Department thus anticipates that these warnings would better achieve the goals of both getting information to students and encouraging improvement than did the approach outlined in the 2019 regulations. As further discussed in the Background section of this proposed rule, we believe that the approach taken with the 2019 Prior Rule does not adequately protect students from low-performing GE programs and that additional protections are needed to safeguard the interests of students and the public.

Under the proposed regulations, as under the 2014 Prior Rule the Department would publish the text that institutions would use for the student warning in a notice in the **Federal Register** to standardize the warning and ensure that the necessary information is adequately conveyed to students. The warning would alert both prospective and enrolled students that the program has not met standards established by the Department based on the amounts students borrow for enrollment in the program and their reported earnings and would also disclose that the program may lose eligibility for title IV, HEA program funds and would explain the implications of ineligibility. In addition, the warning would indicate the options that would be available to continue their education at the institution or at another institution, if the program loses its title IV, HEA program eligibility.

Requiring that the warning be provided directly to a student, and that the student acknowledge having seen the warning, is intended to ensure that students receive and have the ability to act based on the information. Moreover, similar to the 2014 Prior Rule, requiring at least three days to have passed before the institution could enroll a prospective student would provide a ''cooling-off period'' for the student to

[122] Hurwitz, M. and Smith, J. (2018) Student Responsiveness to Earnings Data in the College Scorecard. Economic Inquiry, Vo. 56, Issue 2. *https://doi.org/10.1111/ecin.12530.*

consider the information contained in the warning without immediate and direct pressure from the institution, and would also provide the student with time to consider alternatives to the program either at the same institution or at another institution. To ensure that current and prospective students can make enrollment decisions based upon timely and accurate information, the Department would require institutions otherwise obligated to provide a warning to provide a new warning if a student seeks to enroll more than 12 months after a previous warning was provided in a program that still remains at risk for a loss of eligibility. This 12-month window is longer than the 30-day window provided in the 2014 Prior Rule to reduce administrative burden for institutions while still providing subsequent warning for students after a sufficient time has elapsed. Providing the warnings on an annual basis also increases the likelihood that the warnings would include updated data and limit the chances of providing the exact same data a second time.

Severability (§ 668.606)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.606 to establish severability protections ensuring that if any GE provision is held invalid, the remaining GE provisions, as well as other subparts, would continue to apply.

Reasons: Through the proposed regulations we intend to: (1) Define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation; and (2) Establish a process that would allow the Department to assess and determine the eligibility of GE programs, based in part on the program accountability provisions in proposed subpart Q.

We believe that each of the proposed provisions serves one or more important, related, but distinct, purposes. Each of the requirements provides value, separate from and in addition to the value provided by the other requirements, to students, prospective students, and their families; to the public; taxpayers; the Government; and to institutions. To best serve these purposes, we would include this administrative provision in the regulations to establish and clarify that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of any one provision should not affect the remainder of the provisions.

Please see the discussion of Severability in § 668.409 of this preamble for additional details about how the proposed provisions operate independently of each other for purposes of severability.

Date, Extent, Duration, and Consequence of Eligibility (§ 600.10(c)(1)(v))

Statute: See Authority for This Regulatory Action.

Current Regulations: Current § 600.10(c)(1) requires an institution to provide notice to the Department when expanding its participation in the title IV, HEA programs by adding new educational programs and identifies when an institution must first obtain approval for a new educational program before disbursing title IV, HEA program funds to students enrolled in the program.

Proposed Regulations: We propose to add a new § 600.10(c)(1)(v) to require an institution to provide notice to the Department when establishing or reestablishing the eligibility of a GE program if the institution is subject to any of the restrictions at proposed § 668.603 for failing GE programs. The institution would provide this notice by updating its application to participate in the title IV, HEA programs, as set forth in § 600.21(a)(11).

Reasons: Programs that lose eligibility under proposed subpart S would be subject to the restrictions in proposed § 668.603, namely that an institution may not disburse title IV, HEA program funds to students enrolled in the ineligible program, nor may it seek to reestablish the eligibility of that program until the requisite period of ineligibility has elapsed. Proper enforcement of this provision necessitates conforming changes to § 600.10(c) to require that the Department be informed of when an institution subject to the aforementioned restrictions intends to stand up a GE program either for the first time or following a period of ineligibility.

Updating Application Information (§ 600.21(a)(11))

Statute: See Authority for This Regulatory Action.

Current Regulations: Current § 600.21(a)(11) requires an institution to report to the Department within 10 days certain changes to the institution's GE programs, including to a program's name or CIP code.

Proposed Regulations: We propose to amend § 600.21(a)(11)(v) to require an institution to report, in addition to the items currently listed, changes to a GE program's credential level. In addition, we propose to add paragraph (a)(11)(vi) to require an institution to report any changes to the GE certification status of a GE program under § 668.604.

Reasons: Current § 600.21 requires institutions to update the Department regarding various changes affecting both institutional and program eligibility. We believe this to be the most effective mechanism for institutions to report information regarding GE programs that is critical for the Department to conduct proper monitoring and oversight of those programs. Accordingly, we are proposing conforming changes to § 600.21, which would require institutions to report for any GE program, in addition to the items currently listed, any changes to the program's credential level or certification status pursuant to proposed § 668.604. The Department would require institutions to report changes to a GE program's credential level because different credential levels would be considered distinct programs leading to different employment, earnings, and debt outcomes. We would require institutions to report changes in a GE program's certification status because the program becomes ineligible if it ceases to be included in the scope of an institution's accreditation.

General Definitions (§ 668.2)

Statute: See Authority for This Regulatory Action.

Current Regulations: The current regulations at § 668.2 define key terminology used throughout the student assistance general provisions in this part.

Proposed Regulations: We propose to add new definitions to explain key terminology used in the financial value transparency provisions in proposed subpart Q and the GE program accountability provisions in proposed subpart S. These definitions would be as follows:

- *Annual debt-to-earnings rate.* The ratio of a program's typical annual loan payment amount to the median annual earnings of the students who recently completed the program. This measurement would be expressed as a percentage, and the Department would calculate it under the provisions of proposed § 668.403.
- *Classification of instructional program (CIP) code.* A taxonomy of instructional program classifications and descriptions developed by the Department's National Center for Education Statistics (NCES). Specific

educational programs are classified using a six-digit CIP code.

• *Cohort period.* The set of award years used to identify a cohort of students who completed a program and whose debt and earnings outcomes are used to calculate D/E rates and the earnings threshold measure. The Department proposes to use a two-year cohort period to calculate the D/E rates and earnings threshold measure for a program when the number of students in the two-year cohort period is 30 or more. We would use a four-year cohort period to calculate the D/E rates and earnings thresholds measure when the number of students completing the program in the two-year cohort period is fewer than 30 but the number of students completing the program in the four-year cohort period is 30 or more. A two-year cohort period would consist of the third and fourth award years prior to the year for which the most recent data are available at the time of calculation. For example, given current data production schedules, the D/E rates and earnings premium measure calculated to assess financial value starting in award year 2024–2025 would be calculated in late 2024 or early in 2025. For most programs, the two-year cohort period for these metrics would be award years 2017–2018 and 2018–2019, and earnings data would be measured in calendar years 2021 and 2022. A four-year cohort period would consist of the third, fourth, fifth, and sixth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, for the D/E rates and the earnings threshold measure calculated to assess financial value starting in award year 2024–2025, the four-year cohort period would be award years 2015–2016, 2016–2017, 2017–2018, and 2018–2019; and earnings data would be measured using data from calendar years 2019 through 2022. The cohort period would be calculated differently for programs whose students are required to complete a medical or dental internship or residency. For this purpose, a required medical or dental internship or residency would be a supervised training program that (A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science; (B) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(C) Must be completed before the student may be licensed by a State and board certified for professional practice or service. The two-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth and seventh award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, D/E rates and the earnings threshold measure calculated for award year 2025–2026 would be calculated in 2024; and the two-year cohort period is award years 2014–2015 and 2015–2016. The four-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, the D/E rates and the earnings threshold measure calculated for award year 2025–2026 would be calculated in 2024, and the four-year cohort period would be award years 2012–2013, 2013–2014, 2014–2015, and 2015–2016.

• *Credential level.* The level of the academic credential awarded by an institution to students who complete the program. Undergraduate credential levels would include undergraduate certificate or diploma; associate degree; bachelor's degree; and post-baccalaureate certificate. Graduate credential levels would include graduate certificate, including a postgraduate certificate; master's degree; doctoral degree; and first-professional degree (*e.g.,* MD, DDS, JD).

• *Debt-to-earnings rates (D/E rates).* The annual debt-to-earnings rate and discretionary debt-to-earnings rate, as calculated under proposed § 668.403.

• *Discretionary debt-to-earnings rate.* The percentage of a program's median annual loan payment compared to the median discretionary earnings (defined as median earnings minus 150 percent of the Federal Poverty Guideline for a single person, or zero if this difference is negative) of the students who completed the program.

• *Earnings premium.* The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under proposed § 668.604. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of completers is less than the earnings threshold, the earnings premium is negative.

• *Earnings threshold.* The median annual earnings for an adult that either has positive annual earnings or is categorized as unemployed (*i.e.,* is not working but is looking and available for work) at the time they are interviewed, aged 25 through 34, with only a high school diploma or recognized equivalent in the State in which the institution is located, or nationally if fewer than 50 percent of the students in the program are located in the State where the institution is located. The statistic would be determined using data from a Federal statistical agency that the Secretary deems sufficiently representative to accurately calculate the median earnings of high school graduates in each State, such as the American Community Survey administered by the U.S. Census Bureau. This earnings threshold is compared to the median annual earnings of students who recently completed the program to construct the earnings premium.

• *Eligible non-GE program.* For purposes of proposed subpart Q, an educational program other than a GE program offered by an institution and approved by the Secretary to participate in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. For purposes of attributing coursework, costs, and student assistance received, all coursework associated with the program's credential level would be counted toward the program.

• *Federal agency with earnings data.* A Federal agency with which the Department would maintain an agreement to access data necessary to calculate median earnings for the D/E rates and earnings premium measures. The agency would need to have individual earnings data sufficient to match with title IV, HEA aid recipients who completed any eligible program during the cohort period. Specific Federal agencies with which partnerships may be possible include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

• *GE program.* An educational program offered under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. The Department welcomes public comments about any potential advantages and drawbacks associated with defining a

GE program using the institution's eight-digit OPE ID number instead of the six-digit OPE ID number as proposed.

- *Institutional grants and scholarships.* Financial assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typical examples of this type of assistance would include grants, scholarships, fellowships, discounts, and fee waivers.
- *Length of the program.* The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.
- *Poverty Guideline.* The Poverty Guideline for a single person in the continental United States as published by HHS.
- *Prospective student.* An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program, or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.
- *Student.* For the purposes of proposed subparts Q and S, an individual who received title IV, HEA funds for enrolling in a GE program or eligible non-GE program.
- *Title IV loan.* A loan authorized under the William D. Ford Direct Loan Program (Direct Loan).

Reasons: Current § 668.2 defines key terminology used in the student assistance regulations but does not yet include definitions for the terminology listed above. Uniform usage of these terms would make it easier for institutions to understand the proposed standards and requirements for academic programs and for students and prospective students to understand the information about academic programs that the proposed regulations would provide. Our reasoning for proposing each definition is discussed in the section in which the defined term is first substantively used.

Institutional and Programmatic Information (§ 668.43)

Statute: See Authority for This Regulatory Action.

Current Regulations: Under current § 668.43, institutions must make certain institutional information available to current and prospective students, such as the cost of attending the institution, refund and withdrawal policies, the academic programs offered by the institution, and accreditation and State approval or licensure information. An institution must also provide written notification to students if it determines that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which the student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification.

Proposed Regulations: We propose to amend paragraph (a)(5)(v) to clarify the intent of this disclosure. Specifically, we propose to include language that would require a list of all States where the institution is aware that the program does and does not meet such requirements.

Under proposed § 668.43(d), the Department would establish a website for posting and distributing key information and disclosures pertaining to the institution's educational programs. An institution would provide such information as the Department prescribes through a notice published in the **Federal Register** for disclosure to prospective and enrolled students through the website. This information could include, but would not be limited to, (1) The primary occupations that the program prepares students to enter, along with links to occupational profiles on O*NET (*www.onetonline.org*) or its successor site; (2) The program's or institution's completion rates and withdrawal rates for full-time and less-than-full-time students, as reported to or calculated by the Department; (3) The length of the program in calendar time; (4) The total number of individuals enrolled in the program during the most recently completed award year; (5) The program's D/E rates, as calculated by the Department; (6) The program's earnings premium measure, as calculated by the Department; (7) The loan repayment rate as calculated by the Department for students or graduates who entered repayment on title IV loans; (8) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program; (9) The percentage of the individuals enrolled in the program during the most recently completed award year who received a title IV loan, a private education loan, or both; (10) The median loan debt of students who completed the program during the most recently completed award year, or the median loan debt for all students who completed or withdrew from the program during that award year, as calculated by the Department; (11) The median earnings, as provided by the Department, of students who completed the program or of all students who completed or withdrew from the program; (12) Whether the program is programmatically accredited and the name of the accrediting agency; (13) The supplementary performance measures in proposed § 668.13(e); and (14) A link to the Department's College Navigator website, or its successor site or other similar Federal resource such as the College Scorecard. The institution would be required to provide a prominent link and any other information needed to access the website on any web page containing academic, cost, financial aid, or admissions information about the program or institution. The Department would have the authority to require the institution to modify a web page if the information about how to access the Department's website is not sufficiently prominent, readily accessible, clear, conspicuous, or direct. In addition, the Department would require the institution to provide the relevant information to access the website to any prospective student or third party acting on behalf of the prospective student before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution. The Department would further require that the institution provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution. As further discussed under proposed § 668.407, a student enrolling in a program that the Department has determined to be high-debt-burden or low-earnings through either the D/E rates or the earnings premium measure would receive a warning and would need to acknowledge seeing the warning before the institution disburses title IV, HEA funds.

Reasons: We believe it is important for all programs that lead to occupations requiring programmatic accreditation or State licensure to meet their State's requirements because programs financed by taxpayer dollars should meet the minimum requirements for the occupation for which they prepare students as a safeguard for the financial investment in these programs, as would be required under our proposal to amend § 668.14(b)(32). We also believe it is crucial to know which States consider these programs to be meeting or not meeting such requirements because students have often enrolled in programs that do not meet the necessary requirements for employment in the State that they reside after completing the program. As further explained in § 668.14(b), when institutions enter a written PPA with the Department they agree to meet the PPA's terms and conditions in order to participate in the title IV programs. Requiring institutions to have the necessary certifications or programmatic accreditation to meet their State's requirements for the programs they offer, and to disclose a list of all States where the institution is aware that the program does and does not meet such requirements as would be required under proposed § 668.43(a)(5), would help students make a more informed decision on where to invest their time and money in pursuit of a postsecondary degree or credential.

As discussed in ''§ 668.401 Scope and purpose,'' the proposed disclosures are designed to improve the transparency of student outcomes by: ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about educational programs to inform student and prospective student decision-making; helping the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and allowing institutions to see which programs produce exceptional results for students so that those programs may be emulated.

In particular, the proposed disclosures would provide prospective and enrolled students the information they need to make informed decisions about their educational investment, including where to spend their limited title IV, HEA program funds and use their limited title IV, HEA student eligibility. Prospective students trying to make decisions about whether to enroll in an educational program would find it useful to have easy access to information about the jobs that the program is designed to prepare them to enter, the likelihood that they will complete the program, the financial and time commitment they will have to make, their likely debt burden and ability to repay their loans, their likely earnings, and whether completing the program will provide them the requisite coursework, experience, and accreditation to obtain employment in the jobs associated with the program. The proposed disclosures would also provide valuable information to enrolled students considering their ongoing educational investment and post-completion prospects. For example, we believe that disclosure of completion rates for full-time and less-than-full-time students would inform prospective and enrolled students as to how long it may take them to earn the credential offered by the program. Similarly, we believe that requiring institutions to disclose loan repayment rates would help prospective and enrolled students to better understand how well students who have attended the program before them have been able to manage their loan debt, which could influence their decisions about how much money they should borrow to enroll in the program.

We believe providing these disclosures on a website hosted by the Department would provide consistency in how the information is calculated and presented and would aid current and prospective students in comparing different programs and institutions. To ensure that current and prospective students are aware of this information when making enrollment decisions, institutions would be required to provide a prominent link and any other needed information to access the website on any web page containing academic, cost, financial aid, or admissions information about the program or institution.

Initial and Final Decisions (§ 668.91)

Statute: Section 487 of the HEA provides for administrative hearings in the event of a limitation, suspension, or termination action against an institution. See also Authority for This Regulatory Action.

Current Regulations: Current § 668.91 outlines certain parameters governing the Department's hearing official's initial decision in administrative hearings concerning fine, limitation, suspension, or termination proceedings against an institution or servicer. Section 668.91(a)(2) grants the hearing official latitude to decide whether the imposition of a fine, limitation, suspension, termination, or recovery the Department seeks is warranted. Current § 668.91(a)(3) establishes exceptions to the general authority afforded to the hearing official to weigh the evidence and remedy in an administrative appeal, and sets required outcomes if certain facts are established, including (1) Employing or contracting with excluded parties under § 668.14(b)(18); (2) Failure to provide a required letter of credit or other financial protection unless the institution demonstrates that the amount was not warranted; (3) Failure by an institution or third-party servicer to submit a required annual audit timely; and (4) Failure by an institution to meet the past performance standards of conduct at § 668.15(c).

Proposed Regulations: In new § 668.91(a)(3)(vi), we propose additional circumstances in which the hearing official must rule in a specified manner. Specifically, we propose that a hearing official must terminate the eligibility of a GE program that fails to meet the D/E rates or earnings premium measure, unless the hearing official concludes there was a material error in the calculation of the metric.

Reasons: Proposed § 668.91(a)(3)(vi) is a conforming change to the measures at proposed § 668.603 and would require that a hearing official terminate the eligibility of a GE program that fails to meet the D/E rates or earnings premium measure, unless the hearing official concludes there was a material error in the calculation of the metric. We believe it is important to clearly specify the consequences for failing the GE metrics, both to promote fair and consistent treatment for failing programs as well as to safeguard the interests of students and taxpayers. This limitation reflects the Department's determination about the required outcome in those circumstances, and the hearing official is bound to follow the regulations. The rationale for why we propose limiting this review is further explained in our discussion of proposed § 668.603. The proposed regulations would protect students and taxpayers by foreclosing the possibility that an institution could obtain a less severe outcome such as a monetary fine that allows the GE program to remain eligible while continuing to leave unaddressed the conditions that led to the GE program's failure.

In the interest of fairness and adequate process, proposed § 668.405 would provide institutions with an adequate opportunity to correct the list of completers that would be submitted to the Federal agency with earnings data to ensure that the debt and earnings metrics for each program are calculated based upon the most accurate and current information available. As noted in the discussion of proposed § 668.405, we would not, however, consider challenges to the accuracy of the earnings data received from the Federal agency with earnings data, because such an agency would provide the Department with only the median earnings and the number of non-matches for a program, and would not disclose students' individual earnings data that would enable the Secretary to assess a challenge to reported earnings.

Financial Responsibility (§§ 668.15, 668.23, and 668, Subpart L §§ 171, 174, 175, 176 and 177) (§ 498(c) of the HEA)

Authority for This Regulatory Action: Section 498 of the HEA requires institutions to establish eligibility to provide title IV, HEA funds to their students. The statute directs the Secretary of Education to, among other things, determine the financial responsibility of an institution that seeks to participate, or is participating in, the title IV, HEA student aid programs. To that end, the Secretary is directed to obtain third-party financial guarantees, where appropriate, to offset potential liabilities due to the Department.

The Department's authority for this regulatory action derives primarily from the above statutory provision, which directs the Secretary to establish, make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department.

Factors of Financial Responsibility (§ 668.15)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.15 contains factors of responsibility for institutions participating in the title IV, HEA programs. However, most of these factors have been supplanted with requirements for institutional financial responsibility found at part 668, subpart L—Financial Responsibility. An exception is that the factors at § 668.15 have been applied to institutions undergoing a change in ownership.

Proposed Regulations: The Department proposes to remove and reserve § 668.15.

Reasons: The factors stated in § 668.15 have been supplanted with the later requirements that were added to part 668, subpart L—Financial Responsibility, and became effective in 1998. Removing the factors from § 668.15 would remove unnecessary text and streamline part 668. The factors that are currently applicable to institutions undergoing a change in ownership would be replaced with an updated and expanded list of factors in proposed § 668.176, which would better reflect the Department's consideration of an institution's change in ownership application.

Compliance Audits and Audited Financial Statements (§ 668.23)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: Section 668.23(a)(4) requires institutions not subject to the Single Audit Act, 31 U.S.C. chapter 75, to submit annually to the Department their compliance audit and audited financial statements no later than six months after the end of the institution's fiscal year.

Proposed Regulations: We propose to amend § 668.23(a)(4) to state that an institution not subject to the Single Audit Act must submit its compliance audit and its audited financial statements by the date that is the earlier of 30 days after the date of the auditor's report or 6 months after the last day of the institution's fiscal year.

Reasons: The Department is concerned that the current deadlines for submitting audited financial statements or compliance audits used to annually assess an institution's financial responsibility do not provide timely notice to the Department about significant financial concerns, even when institutions are aware of these concerns for months. The sooner the Department is made aware of situations where an institution's financial stability is in question, the sooner the Department can address the institution's situation and mitigate potential impacts on the institution's students. This is especially the case when an institution's lack of financial stability is a signal of an imminent potential closure. Those negative impacts associated with institutional closure include disruption of the students' education, delay in completing their educational program, and the loss of academic credit upon transfer to another institution. In addition, many students abandon their educational journeys altogether when their institutions close. In a September 2021 report,[123] the U.S. Government Accountability Office (GAO) found that 43 percent of borrowers whose colleges closed from 2010 through 2020 did not enroll in another institution or complete their program. As GAO noted, this showed that ''closures are often the end of the road for a student's education.'' Furthermore, negative consequences of a school's closure not only impact students but have negative effects on taxpayers as a result of the Department's obligation to discharge student loan balances of borrowers impacted by the closure. The Department recently revised rules governing closed school discharges in final rules published in the **Federal Register** on November 1, 2022,[124] increasing the need for financial protection when the Department is aware of potential and imminent closure. Finally, beyond student loan discharges, the Department often finds itself unable to collect any liabilities owed to the Federal government due to the insolvency of the closed institution. Obtaining financial surety prior to a closure would help to offset these types of liabilities.

Receiving compliance audits and financial statements within 30 days of when the report was dated, if it is dated at least 30 days prior to the six-month deadline (which would then be the operative deadline), would allow the Department to conduct effective oversight, obtain financial protection, and ensure students have options for teach-out agreements once we are made aware of financial situations that may indicate a potential closure is imminent. In addition, earlier submission of an institution's audited financial statements could alert the Department more quickly of an institution's failure to meet the 90/10 requirement, enabling prompt action to enforce those rules thereby protecting student and taxpayer interests.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: Section 668.23(a)(5) refers to the audit submitted by institutions subject to the Single Audit Act as an audit conducted in accordance with the Office of Management and Budget (OMB) Circular A–133.

Proposed Regulations: The Department proposes to amend § 668.23(a)(5) by replacing the outdated reference to the OMB Circular A–133

[123] *www.gao.gov/assets/gao-21-105373.pdf.*

[124] 87 FR 65904.

with the current reference: 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

Reasons: This change would update the regulation to include the appropriate cite for conducting audits of institutions subject to the Single Audit Act.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: The requirement in current § 668.23(d)(1) states that an institution's audited financial statements must disclose all related parties and a level of detail that would enable the Department to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

Proposed Regulations: The Department proposes to amend § 668.23(d)(1) to change the passage ''Such information may include. . .'' to ''Such information must include. . .''. The result of the proposal would require that institutions continue to include in their audited financial statements a disclosure of all related parties and a level of detail that would enable the Department to readily identify the related party. The proposed regulation would go on to state that the information must include, but would not be limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

The Department also proposes to amend § 668.23(d)(1) to note that the financial statements submitted to the Department must be the latest complete fiscal year (or years, if there is a request for more than one year). We also propose that the fiscal year covered by the financial statements submitted must match the dates of the entity's annual return(s) filed with the Internal Revenue Service (IRS).

Reasons: This change is necessary for the Department to ensure that it has greater understanding of an institution's related parties. The items being required here are basic identifying factors and provide the minimum level of information required for an understanding of the institution's situation.

The proposed clarifications to the fiscal years covered by audited financial statements would serve two purposes. First, the requirement to submit financial statements for the latest completed fiscal year would ensure that we are receiving the most up-to-date information from an institution. This is particularly important for new institution submissions, which are already required to comply with these requirements under current § 668.15, which we propose to remove and reserve in light of the new proposed § 668.176. Second, the proposed requirement that the dates of the fiscal year for the financial statements submitted to the Department match those on the statements submitted to the IRS addresses a concern the Department has seen where institutions have adjusted their fiscal years to avoid submitting the most up-to-date financial information to the Department. This change would ensure the Department receives consistent and up-to-date information, which is necessary for evaluating the financial health of institutions.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: The current regulations do not address any special submission requirements for domestic or foreign institutions that are owned directly or indirectly by any foreign entity with at least a 50 percent voting or equity interest.

Proposed Regulations: The Department proposes to add § 668.23(d)(2)(ii) to require that an institution, domestic or foreign, that is owned by a foreign entity holding at least a 50 percent voting or equity interest provide documentation of its status under the law of the jurisdiction under which it is organized, as well as basic organizational documents.

Reasons: The proposed regulations would better equip the Department to obtain appropriate and necessary documentation from an institution which has a foreign owner or owners with 50 percent or greater voting or equity interest. Currently, the Department cannot always determine who is or was controlling an entity when it gets into financial difficulty or closes. This is exacerbated when the institution is controlled by a foreign entity. This proposed regulation would provide a clearer picture of the institution's legal status to the Department, as well as who exercises direct or indirect ownership over the institution. Knowing the legal owner is important for situations such as when we request financial protection, when we seek to collect an audit or program review liability, or when an institution closes.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under the statute.

Current Regulations: None.

Proposed Regulations: The Department proposes to add § 668.23(d)(5) which would require an institution to disclose in a footnote to its audited financial statement the amounts spent in the previous fiscal year on the following:

- Recruiting activities;
- Advertising; and
- Other pre-enrollment expenditures.

Reasons: The Department has observed that some institutions spend institutional funds on student recruitment, advertising, and other pre-enrollment expenditures in amounts greatly out of proportion to expenditures on instruction and instructionally related activities. We believe this type of spending pattern is a possible indicator of institutional financial instability. For example, an institution with a solid financial foundation will often spend institutional funds to add new instructional programs or improve existing ones. An institution would expect that such improvements or expansions would improve the future outlook for the institution. On the other hand, an institution feeling pressure due to a declining financial situation may spend excessive amounts of its resources on recruitment, advertising, or other pre-enrollment expenditures to generate revenue in the short-term, at the possible detriment to the institution in the long-term. Requiring institutions to disclose amounts spent on these types of activities would provide the Department a more comprehensive view into the financial health and stability of institutions.

Financial Responsibility—General Requirements (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(b)(3)(i) states that an institution is not able to meet its financial or administrative obligations if it fails to make refunds under its refund policy or to return title IV, HEA program funds for which it is responsible.

Proposed Regulations: In § 668.171(b)(3), the Department proposes to add additional indicators. Proposed paragraph (b)(3)(i) states that an institution would not be financially responsible if it fails to pay title IV, HEA credit balances as required under current § 668.164(h)(2). Proposed paragraph (b)(3)(iii) states that an institution would not be financially responsible if it fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days. Proposed paragraph (b)(iv) states that an institution would not be financially responsible if it fails to satisfy payroll obligations in accordance with its published payroll schedule. Lastly, proposed paragraph (b)(3)(v) states that an institution would not be financially responsible if it borrows funds from retirement plans or restricted funds without authorization.

Reasons: An institution participating in the title IV, HEA programs acts as a fiduciary in its handling of title IV, HEA program funds on behalf of students. It thus has an obligation to abide by requirements to both return unused title IV, HEA funds and pay out credit balances to students. An institution's failure to pay a student funds belonging to that student is a strong indicator of the institution's lack of financial responsibility and stability. The Department is concerned that an institution that refuses to pay, or is unable to pay, credit balances owed to students may be holding onto them to address underlying financial concerns.

The Department is generally concerned when an institution is not meeting its financial obligations. The additional indicators the Department proposes to add in § 668.171(b)(3) all involve situations where an institution is not meeting its financial obligations, such as making payroll or payments on required debt agreements. To that end, monies that belong to and are owed to students are no different—they are obligations that must be fulfilled. Thus, the proposed regulation would expand the definition of not financially responsible to include the failure to pay title IV, HEA credit balances as required under current § 668.164(h)(2).

This change is also in keeping with recently finalized regulations relating to the requirement that postsecondary institutions of higher education obtain at least 10 percent of their revenue from non-Federal sources, also known as the 90/10 rule. In § 668.28(a)(2)(ii)(B), proprietary institutions may not delay the disbursement of title IV, HEA funds to the next fiscal year to adjust their 90/10 rate.

Financial Responsibility—Mandatory Triggering Events (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(c) lists several mandatory triggering events impacting an institution's financial responsibility. These triggers were implemented in the 2019 Final Borrower Defense Regulations [125] to reduce the impact of the prior triggers that had been implemented in the 2016 Final Borrower Defense Regulations.[126] The current mandatory triggers are these instances:

- The institution incurs a liability from a settlement, final judgment, or final determination arising from an administrative or judicial action or proceeding initiated by a Federal or State entity;
- For a proprietary institution whose composite score is less than 1.5, there is a withdrawal of an owner's equity from the institution by any means, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; and as a result of that liability or withdrawal, the institution's recalculated composite score is less than 1.0, as determined by the Department;
- For a publicly traded institution—
- The U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of the institution's securities pursuant to Section 12(j) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') or suspends trading of the institution's securities on any national securities exchange pursuant to Section 12(k) of the Exchange Act; or
- The national securities exchange on which the institution's securities are traded notifies the institution that it is not in compliance with the exchange's listing requirements and, as a result, the institution's securities are delisted, either voluntarily or involuntarily, pursuant to the rules of the relevant national securities exchange;
- The SEC is not in timely receipt of a required report and did not issue an extension to file the report.

If any of the mandatory triggering events occur, the Department would deem the institution to be unable to meet its financial or administrative obligations. Usually, this will result in the Department obtaining financial protection, generally a letter of credit, from the institution.

Proposed Regulations: The Department proposes to amend § 668.171(c) with a more robust set of mandatory triggers. Proposed § 668.171(c) would keep or expand the existing mandatory triggers, change some existing discretionary triggers to become mandatory and add new mandatory triggers. We are also proposing to add new discretionary triggers, which are discussed separately in § 668.171(d). As with the existing § 668.171(c), if any of the mandatory trigger events occur, the Department would deem the institution as unable to meet its financial or administrative obligations and obtain financial protection. The proposed mandatory triggers are situations where:

- Under § 668.171(c)(2)(i)(A), an institution or entity with a composite score of less than 1.5 is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, or a final judgment in a judicial or administrative proceeding, and the debt or liability results in a recalculated composite score of less than 1.0, as determined by the Department;
- Under § 668.171(c)(2)(i)(B), the institution or entity is sued to impose an injunction, establish fines or penalties, or to obtain financial relief such as damages, in an action brought on or after July 1, 2024, by a Federal or State authority, or through a qui tam lawsuit in which the Federal government has intervened and the suit has been pending for at least 120 days;

[125] 84 FR 49788.

[126] 81 FR 75926.

- Under § 668.171(c)(2)(i)(C), the Department has initiated action to recover from the institution the cost of adjudicated claims in favor of borrowers under the student loan discharge provisions in part 685, and including that potential liability in the composite score results in a recalculated composite score of less than 1.0, as determined by the Department;
- Under § 668.171(c)(2)(i)(D), an institution that has submitted a change in ownership application and is required to pay a debt or incurs liabilities (from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding), at any point through the end of the second full fiscal year after the change in ownership has occurred, would be required to post financial protection in the amount specified by the Department if so directed by the Department;
- Under § 668.171(c)(2)(ii)(A) and (B), for a proprietary institution whose composite score is less than 1.5, or for any proprietary institution through the end of the first full fiscal year following a change in ownership, and there is a withdrawal of owner's equity by any means, including by declaring a dividend, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated or the withdrawal is the equivalent of wages in a sole proprietorship or general partnership or a required dividend or return of capital and as a result the institution's recalculated composite score is less than 1.0, as determined by the Department;
- Under § 668.171(c)(2)(iii), the institution received at least 50 percent of its title IV, HEA funding in its most recently completed fiscal year from gainful employment programs that are failing under proposed subpart S of part 668, as determined by the Department;
- Under § 668.171(c)(2)(iv), the institution is required to submit a teach-out plan or agreement by a State or Federal agency, an accrediting agency, or other oversight body;
- Under § 668.171(c)(2)(v), the institution is cited by a State licensing or authorizing agency for failing to meet that entity's requirements and that entity provides notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not come into compliance with the requirement. Under current regulations, this is a discretionary trigger;
- Under § 668.171(c)(2)(vi), at least 50 percent of the institution is owned directly or indirectly by an entity whose securities are listed on a domestic or foreign exchange and is subject to one or more actions or events initiated by the U.S. Securities and Exchange Commission (SEC) or by the exchange where the entity's securities are listed. Those actions or events are when:
  - The SEC issues an order suspending or revoking the registration of any of the entity's securities pursuant to section 12(j) of the Securities Exchange Act of 1934 (the ''Exchange Act'') or suspends trading of the entity's securities pursuant to section 12(k) of the Exchange Act;
  - The SEC files an action against the entity in district court or issues an order instituting proceedings pursuant to section 12(j) of the Exchange Act;
  - The exchange on which the entity's securities are listed notifies the entity that it is not in compliance with the exchange's listing requirements, or its securities are delisted;
  - The entity failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date under 17 CFR 240.12b–25; or
  - The entity is subject to an event, notification, or condition by a foreign exchange or foreign oversight authority that the Department determines is the equivalent to the items listed above in the first four sub-bullets of this passage.
- Under § 668.171(c)(2)(vii), a proprietary institution, for its most recently completed fiscal year, did not receive at least 10 percent of its revenue from sources other than Federal education assistance as required under § 668.28;
- Under § 668.171(c)(2)(viii), the institution's two most recent official cohort default rates are 30 percent or greater unless the institution has filed a challenge, request for adjustment, or appeal and that action has reduced the rate to below 30 percent, or the action remains pending. Under current regulations, this is a discretionary trigger;
- Under § 668.171(c)(2)(ix), the institution has lost eligibility to participate in another Federal education assistance program due to an administrative action against the institution;
- Under § 668.171(c)(2)(x), the institution's financial statements reflect a contribution in the last quarter of the fiscal year and then the institution made a distribution during the first or second quarter of the next fiscal year and that action results in a recalculated composite score of less than 1.0, as determined by the Department;
- Under § 668.171(c)(2)(xi), the institution or entity is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement due to an action by the Department;
- Under § 668.171(c)(2)(xii), the institution makes a declaration of financial exigency to a Federal, State, Tribal or foreign governmental agency or its accrediting agency; or
- Under § 668.171(c)(2)(xiii), the institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law.

Reasons: In the current process, the Department determines annually whether an institution is financially responsible based on its audited financial statements along with enforcing the limited number of triggering events existing in current § 668.171(c). The triggering events complement the annual financial composite score process by providing a stronger and more timely way to conduct regular and ongoing monitoring. Because composite scores are based upon an institution's audited financial statements, they are only produced once a year and are typically not calculated until many months after an institution's fiscal year ends. By contrast, institutions would have to report on triggering events on a much faster timeline, giving the Department more up-to-date information about situations that may appreciably change an institution's financial situation. The Department is concerned that the existing list of financial triggers, which were reduced in the 2019 Final Borrower Defense Regulations, is insufficient to capture the full range of events that can represent significant and urgent threats to an institution's ability to remain financially responsible, putting students and taxpayer dollars at risk. The Department has seen where the existing regulatory mandatory triggers, with their inherent limitations, allow institutions with questionable financial stability to continue without activating a mandatory trigger which would have called for possible Departmental action. This includes several situations where the institution ultimately closed without the Department having any financial protection to offset liabilities, such as those related to closed school loan discharges for borrowers. When an institution moves toward a status of financial instability or irresponsibility, the Department increases its oversight and, when necessary, obtains financial protection from the institution. These proposed mandatory triggers would remedy the inherent limitations in the current list of triggers and serve as a tool with which the Department can fulfill its oversight responsibility, thereby ensuring better protection for students and taxpayers.

Under the proposed regulations, the Department would determine at the time a material action or triggering event occurs that the institution is not financially responsible and seek financial protection from that institution. The consequences of these actions and triggering events threaten an institution's ability to (1) meet its current and future financial obligations, (2) continue as a going concern or continue to participate in the title IV, HEA programs, and (3) continue to deliver educational services. In addition, these actions and events call into question the institution's ability or commitment to provide the necessary resources to comply with title IV, HEA requirements. The proposed triggers would bring increased scrutiny to institutions that have one or more indicators of impaired financial responsibility. That increased scrutiny would often lead to the Department obtaining financial protection from the institution. This financial protection, usually a letter of credit, funds put in escrow, or an offset of title IV, HEA funds, is important for the Department to protect the interests of students and taxpayers in the event of an institutional closure.

In selecting mandatory triggers, the Department considered a variety of events and conduct that lead to financial risk. In particular, we looked for situations in which these events or conduct have resulted in significant impairment to an institution's financial health, and if the impairment is significant enough, closure of the institution. This has included some closures that were precipitous, harming both students and taxpayers.

One category of mandatory triggers includes events or conduct where we have seen a significant destabilizing effect on an institution's financial health based upon past Department experience. These events are reflected in the mandatory triggers for debts and liabilities, judgments, governmental actions, SEC or regulator action(s) for public institutions, financial exigency, and receivership. Another category of mandatory triggers includes situations where institutional conduct might lead to loss of eligibility for title IV if not promptly remediated, such as high cohort default rates or failing 90/10, as well as situations involving the loss of access to other Federal educational assistance programs.

We also considered situations for which we do not yet have historical experience, but which have the potential to have a similar negative financial effect. For example, the mandatory triggers related to borrower defense recoupment and a significant share of title IV, HEA program funds in a failing GE program or programs have not occurred in high numbers or have yet to occur, respectively, but they both represent situations in which there would be a known and quantifiable potential liability or loss in revenue that would likely result in significant impairment to an institution's financial health, and if the impairment is significant enough, closure of the institution. Discretionary triggers, by contrast, indicate elements of concern that merit a closer look but may not in all circumstances necessitate obtaining financial protection.

Other mandatory triggers protect the Department's oversight capabilities. Triggers that fall into this category include, for example, situations where owners attempt to manipulate the institution's composite score by making contributions and then withdrawing the funds after the end of the fiscal year. Other triggers in this category include situations in which an outside investor or lender tries to discourage or hamper Department oversight by imposing conditions in financing agreements that trigger negative effects for the institution if the Department were to restrict title IV, HEA funding. Such situations are designed to do one of two things that weakens oversight. One is to discourage the Department from acting against an institution since the threat of financial impairment could cause an institution to become unstable and close, even if the Department's proposed action is less severe than that. The second is to make it easier for outside lenders to get paid as soon as an institution starts to face Department scrutiny. For instance, the Department has in the past seen institutions with financing arrangements that would make entire loans come due upon actions by the Department to delay aid disbursement through heightened cash monitoring. That allows lenders to get paid right away even while the Department determines if there are greater concerns that might otherwise merit obtaining financial protection. Making this type of trigger mandatory thus allows us to address both types of concerning reasons for using such restrictions in a financing arrangement.

More detail on the individual mandatory triggers follows below.

The Department proposes to amend § 668.171(c)(2)(i)(A) by establishing a mandatory trigger for institutions with a composite score of less than 1.5 that are required to pay a debt or incur a liability from a settlement, arbitration proceeding, or final judgment in a judicial proceeding and that debt or liability occurs after the end of the fiscal year for which the Secretary has most recently calculated the institution's composite score, and as a result of that debt or liability, the recalculated composite score for the institution or entity is less than 1.0. The proposed trigger is similar to current § 668.171(c)(2)(i)(A) but we propose to make two important changes. The first would expand the scope of the type of legal or administrative action to include arbitration proceedings. The Department is concerned that their current exclusion would miss an otherwise similar event that could represent a financial threat to an institution. The Department also proposes to simplify the way these proceedings are defined to eliminate the explanation for what constitutes a determination.

When an institution is subject to the types of debts, liabilities, or losses covered under proposed § 668.171(c)(2)(i)(A), it negatively impacts the institution's ability to direct resources to providing instruction and services to its students. This proposed trigger would focus on institutions that have already been identified as having a composite score that is less than passing. We would only seek financial protection from the institution when the institutional debt, liability or loss pushes the institution's recalculated composite score to less than 1.0, which is the already established threshold for a composite score to be considered failing. That financial protection would protect students from the results of negative consequences, including closure, that flows out of the institution being subject to these debts, liabilities, or losses.

Proposed § 668.171(c)(2)(i)(B) would establish a mandatory trigger for institutions or entities that are sued by a Federal or State authority, to impose an injunction, establish fines or penalties, or obtain financial relief such as damages or through a qui tam lawsuit. In the event of a qui tam lawsuit, this trigger would occur only once the Federal government has intervened. The trigger would take effect when the action has been pending for 120 days, or a qui tam has been pending for 120 days following intervention, and no motion to dismiss has been filed, or if a motion to dismiss has been filed within 120 days and denied, upon such denial.

Institutions subject to these types of actions are likely to have their financial stability negatively impacted. Institutions with triggering events described here are, in our view, at increased risk of possible closure. Financial protection would be obtained to offset the negative impacts of a possible closure placed upon students and taxpayers.

A version of this trigger had been included in the 2016 final borrower defense regulations but was removed in the 2019 borrower defense final rule on the grounds that the Department wanted to focus on actual liabilities owed rather than theoretical amounts and to wait for lawsuits to be final before seeking to recover liabilities. However, as the Department continues to improve its work overseeing institutions of higher education, we are concerned that waiting until multi-year proceedings are final undermines the purpose of taking proactive actions to protect the Federal fiscal interest. The trigger as structured here is designed to capture lawsuits that indicate significant levels of action and government involvement. These are not particularly common, are not brought lightly, and only involve a non-governmental actor if it is a qui tam lawsuit in which the Federal government has intervened. Moreover, the Department is concerned that waiting until the proceedings finish increases the risk that an institution that fails in an appeal would simply shut down immediately. By contrast, financial protection received can always be returned to the institution if the issues that necessitated it is resolved.

The Department is proposing to add § 668.171(c)(2)(i)(C) related to financial protection when the Department has adjudicated borrower defense claims in favor of borrowers and is seeking to recoup the cost of those discharges through an administrative proceeding. An institution would meet this trigger if a recalculated composite score that included this potential liability results in a composite score below 1.0.

The structure of this trigger acknowledges the circumstances under which an institution could be subject to recoupment actions tied to approved borrower defense applications under the final rule published on November 1, 2022.[127] Specifically, that rule establishes a single framework for reviewing all claims pending on July 1, 2023, or received on or after that date. This is different from prior borrower defense regulations, which apply different standards depending on a student loan's original disbursement date. That regulation states that an institution would not be subject to recoupment if the claim would not have been approved under the standard in effect at the time the loan was disbursed. Therefore, the trigger associated with approved borrower defense claims would not apply to claims that are approved but ineligible for recoupment under the new borrower defense regulation. Obtaining financial protection will help to ensure that there are institutional funds available to pay loan discharges if such discharges arise and are applicable, reducing the need for public funds to meet this obligation.

A similar trigger to this proposal was included in the 2016 Final Borrower Defense Regulations. That trigger was reduced in scope when financial responsibility standards were eliminated or lessened in the 2019 Final Borrower Defense Regulations. The rationale for limiting this trigger in 2019 was to restrict this trigger to what, at that time, was considered ''known and quantifiable'' amounts. An example of a known and quantifiable trigger was an actual liability incurred from a lawsuit. A known and quantifiable trigger was one whose consequences posed such a severe and imminent risk (*e.g.,* SEC or stock exchange actions) to the Federal interest that financial protection was warranted. This revised trigger would result in a known and quantifiable amount because the Department informs the institution of the amount of liability it is seeking when it initiates a recoupment action. The recalculation requirement also ensures that if the institution would still have a passing composite score, then they would not have to provide additional surety. For those that would have a failing score, this trigger simply ensures that if an institution does not prevail in any sort of recoupment action that the Department would have sufficient resources on hand to fulfill the liability. Absent this protection, there is a risk the institution would not have the resources to pay the liability by the time that proceeding is final.

Further, proposed § 668.171(c)(2)(i)(D) would apply to institutions undergoing a change in ownership for a period of time commencing with their approval to participate in the title IV, HEA programs through the end of the institution's second full fiscal year following certification. The Department proposes to add this condition because we are concerned that institutions may be in a vulnerable position in the period after a change in ownership as the new owners acclimate to managing the institution. Greater scrutiny of these situations is thus warranted.

The Department proposes to move the current § 668.171(c)(1)(i)(B) and (ii) into a replacement of § 668.171(c)(2)(ii) to establish a mandatory trigger for institutions where an owner withdraws some amount of his or her equity in the institution when that institution has a composite score of less than 1.5 (the threshold considered passing) and the withdrawal of equity results in a recalculated composite score of less than 1.0 (the threshold considered failing). This relocated trigger clarifies that this requirement would also apply to institutions undergoing a change in ownership for the year following that change. This trigger would apply to institutions that have a calculated composite score that is not passing and have already demonstrated some financial instability. This demonstration of financial instability creates a situation where the Department would obtain financial protection from an institution.

The Department proposes to add § 668.171(c)(2)(iii) to establish a mandatory trigger for institutions that received at least 50 percent of its title IV, HEA program funds in its most recently completed fiscal year from gainful employment (GE) programs that are ''failing.'' The 2016 Final Borrower Defense Regulations included a mandatory trigger linked to the number of students enrolled in failing GE programs. The 2019 Final Borrower Defense Regulations removed that trigger due to the regulations regarding GE programs being rescinded in a final rule published in the **Federal Register** on July 1, 2019.[128] This trigger contained in this proposed rule would be linked to the implementation of regulations in part 668, subpart S, governing gainful employment programs. The Department would be able to obtain financial protection from an institution when its revenue is negatively impacted when the GE programs it offers fail the Department's GE metrics. The Department believes reinstating this trigger is necessary because the potential loss of revenue from failing GE programs would have a negative impact on the institution's overall financial stability when it represents such a significant share of the institution's revenue. The Department proposes the trigger occurring when 50 percent of an institution's title IV, HEA volume is in failing GE programs. The

[127] 87 FR 65904.

[128] 84 FR 31392.

Department uses percentage thresholds to require financial protection when there is more than an insignificant failure in compliance. For example, under 668.173(b), an institution fails to meet the reserve standards under § 668.173(a)(3) if the institution failed to timely return unearned title IV, HEA funds for 5 percent or more students in a sample. In that circumstance, the financial protection is 25 percent of the total amount of unearned funds. For the failing GE programs, the Department determined that a 50 percent failure is reasonably related to the required financial protection of 10 percent of the institution's title IV, HEA funding because the institution is at risk of losing a majority of its title IV program revenue due to failure of some or all of its GE programs.

The Department proposes to add § 668.171(c)(2)(iv) to establish a mandatory trigger for institutions required to submit a teach-out plan or agreement. This mandatory trigger was originally implemented in the 2016 Final Borrower Defense Regulations and was subsequently removed in the 2019 Final Borrower Defense Regulations. The rationale in 2019 was that teach-outs were primarily the jurisdiction of accrediting agencies. The Department stated in the discussion section of that final rule that accrediting agencies are required to approve teach-out plans at institutions under certain circumstances, which demonstrates how important these plans are to ensuring that students have a chance to complete their instructional program in the event their school closes. At that time, we sought to incentivize teach-outs, and determined that linking a teach-out to a financial trigger was not an incentive. However, the Department has not seen any evidence that the efforts to incentivize teach-out plans or agreements through accreditors has reduced the number of institutions that close without a teach-out plan or agreement in place. Instead, the Department continues to witness disruptive and ill-planned closures where the institution has not made any arrangements for where students might transfer and complete their programs. Even when the school survives after a teach-out, the circumstances that could lead to such a request make it likely that the school's revenues will be significantly reduced and will be indicative of ongoing financial instability. We propose to re-implement this mandatory trigger so that we can obtain financial protection from institutions that are in this status. When an institutional closure is imminent, regardless if it is one location or the entire institution, obtaining financial protection from the institution as soon as possible is necessary to protect the interests of students who will be negatively affected by the closure. Financial protection is also necessary to protect the interests of taxpayers who would have to provide funds for costs and obligations emanating from the closure, *e.g.,* payment of loan discharges. While a closed institution bears responsibility for reimbursing the Department for student loans discharged due to the closure, the actual recoupment of those funds takes place very rarely due to the institution ceasing to exist. This further illustrates the necessity for financial protection from institutions in this status.

The Department proposes to add § 668.171(c)(2)(v) by to establish a mandatory trigger for institutions cited by a State licensing or authorizing agency for failing to meet State or agency requirements when the agency provides notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement. The 2016 Final Borrower Defense Regulations had a similar mandatory trigger to this proposed trigger. The 2019 Final Borrower Defense Regulations added the language stating that the authorizing agency would terminate the institution's licensure or authorization if the institution did not comply; however, the 2019 Final Borrower Defense Regulations relegated this trigger to the discretionary category. We propose to keep the language added in the 2019 Final Borrower Defense Regulations but recategorize this trigger as mandatory. State authorization, or similar authorization from a governmental entity, is a fundamental factor of institutional eligibility. If an institution loses that factor, it would lose the ability to participate in the title IV, HEA programs. That loss of eligibility would significantly increase the likelihood that an institution may close. The seriousness of that potential occurrence is so great that the Department does not believe there are circumstances where it would not be appropriate to request financial protection. Accordingly, we think this is more appropriate as a mandatory trigger rather than a discretionary one.

The Department proposes to add § 668.171(c)(2)(vi) to establish a mandatory trigger for institutions that are directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange and that entity is subject to one or more actions or events initiated by the U.S. Securities and Exchange Commission (SEC) or the exchange where the securities are listed. This mandatory trigger is, for the most part, in current regulation in § 668.171(c)(2). Our proposal would clarify that if the SEC files an action against the entity in district court or issues an order instituting proceedings pursuant to section 12(j) of the Exchange Act, that action would be a triggering event. The Department views either of these as actions we would take only when the SEC has identified and vetted serious issues, signaling increased risk to students attending those affected entities.

We further clarify that ''exchanges'' includes both domestic and foreign exchanges where the entity's securities may be traded. We recognize that some entities owning schools have stocks that are traded on foreign exchanges, and we believe similar actions initiated in those foreign exchanges or foreign oversight authorities warrant equivalent treatment under these proposed regulations.

The proposed trigger would enable the Department to obtain financial protection in situations where the SEC, a foreign or domestic exchange, or a foreign oversight authority, takes an action that potentially jeopardizes the institution's financial stability. This surety would protect the interests of the institution's students and the interests of taxpayers, both of whom can be negatively impacted by an institution's faltering financial stability.

The Department proposes to add § 668.171(c)(2)(vii) to establish a mandatory trigger for proprietary institutions where, in its most recently completed fiscal year, an institution did not receive at least 10 percent of its revenue from sources other than Federal educational assistance. The financial protection provided under this requirement will remain in place until the institution passes the 90/10 revenue requirement for two consecutive fiscal years. A mandatory trigger linked to the 90/10 revenue requirement was included in the 2016 Final Borrower Defense Regulations and it was reduced to a discretionary trigger in the 2019 Final Borrower Defense Regulations. Both of those triggers were linked to the then applicable rule which prohibited a proprietary institution from obtaining greater than 90 percent of its revenue from the title IV, HEA programs. The American Rescue Plan of 2021 [129] amended section 487(a) of the HEA requiring that proprietary institutions

[129] *www.congress.gov/bill/117th-congress/house-bill/1319/text.*

derive not less than 10 percent of their revenue from non-Federal sources. Therefore, we propose to expand the 90/10 requirement to include all Federal educational assistance in the calculation as opposed to only including title IV, HEA assistance. An institution that fails the 90/10 requirement is at significant risk of losing its ability to participate in the title IV, HEA programs, which could put it in extreme financial jeopardy. Since the 90/10 requirement now includes all Federal educational assistance, it is possible that some institutions that previously met this threshold under the prior rule no longer would. The possibility for an increased number of institutions falling into this category warrants making this a mandatory trigger. Obtaining financial protection from an institution in this status is essential to protect students and taxpayers from an institution's potential loss of access to title IV, HEA funds and from a possible institutional closure and its negative consequences.

The Department proposes to add § 668.171(c)(2)(viii) to establish a mandatory trigger for institutions whose two most recent official cohort default rates (CDR) are 30 percent or greater, unless the institution files a challenge, request for adjustment, or appeal with respect to its rates for one or both of those fiscal years; and that challenge, request, or appeal remains pending, results in reducing below 30 percent the official CDR for either or both of those years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

This trigger was included as a mandatory trigger in the 2016 Final Borrower Defense Regulations, and it was reduced to a discretionary trigger in the 2019 Final Borrower Defense Regulations. The rationale in 2019 for categorizing this trigger as discretionary was based on the idea that it was more appropriate to allow the Department to review the institution's efforts to improve their CDR before obtaining financial protection. As part of that review, the Department would evaluate whether the institution had acted to remedy or mitigate the causes for its CDR failure or to assess the extent to which there were anomalous or mitigating circumstances precipitating this triggering event, before determining whether we needed to obtain financial protection. Part of that review was to include evaluating the institution's response to the triggering event to determine whether a subsequent failure was likely to occur, based on actions the institution is taking to mitigate its dependence on title IV, HEA funds. This included the extent to which a loss of title IV, HEA funds due to a CDR failure would affect its financial condition or ability to continue as a going concern, or whether the institution had challenged or appealed one or more of its default rates. We now propose to raise this trigger to the mandatory classification because of the serious consequences attached to CDRs at this level. Institutions with high CDRs are failing to meet the standards of administrative capability under § 668.16(m). Further, institutions with high CDRs are subject to the following sanctions:

- An institution with a CDR of greater than 40 percent for any one year loses eligibility to participate in the Federal Direct Loan Program.
- An institution with a CDR of 30 percent or more for any one year must create a default prevention taskforce that will develop and implement a plan to address the institution's high CDR. That plan must be submitted to the Department for review.
- An institution with a CDR of 30 percent or more for two consecutive years must submit to the Department a revised default prevention plan and may be placed on provisional certification.
- An institution with a CDR of 30 percent or more for three consecutive years loses eligibility to participate in both the Direct Loan Program and in the Federal Pell Grant Program.

Institutions subject to these sanctions will generally find themselves at risk of losing eligibility to participate in some title IV, HEA programs resulting in a decreased revenue flow. This circumstance is often a harbinger of an institution's financial distress and possible closure. Obtaining financial surety from an institution immediately after the institution finds itself in this status is necessary to offset any costs associated with an institutional closure and to alleviate any possible harm to students or taxpayers.

The Department proposes to add § 668.171(c)(2)(ix) to establish a mandatory trigger for institutions that have lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school. This would be a new trigger not previously included in other regulations. The Department is aware of some institutions that have lost their eligibility to participate in Federal educational assistance programs overseen by agencies other than the Department. Institutions in that status have generally demonstrated some weakness or some area of noncompliance resulting in their loss of eligibility. That weakness or noncompliance may also be an indicator of the institution's lack of administrative capability to administer the title IV, HEA programs. Further, the institution will likely suffer some negative impact on its revenue flow linked to its loss of eligibility to participate in the program. In either or both events, we propose that the Department obtain financial protection from institutions in this category to protect students and taxpayers from any negative consequences, including the possible closure of the institution, associated with its loss of eligibility to participate in the educational assistance program.

The Department proposes to add § 668.171(c)(2)(x) to establish a mandatory trigger for institutions whose financial statements required to be submitted under § 668.23 reflect a contribution in the last quarter of the fiscal year, and the institution then made a distribution during the first two quarters of the next fiscal year; and the offset of such distribution against the contribution results in a recalculated composite score of less than 1.0, as determined by the Department. This would be a new mandatory trigger. The Department has seen examples of institutions who seek to manipulate their composite score calculations by having a contribution made late in the fiscal year, raising the composite score for that fiscal year typically by enough so that it passes. However, the same institutions then make a distribution in the same or a similar amount early in the following fiscal year. This removes capital from the school and means that it is operating in a situation that may not demonstrate financial responsibility. With this proposal, we would obtain financial protection from an institution engaging in this pattern of behavior when that pattern results in a recalculated composite score of less than 1.0. Institutions engaging in this pattern of behavior generally do so to boost the apparent financial strength of the annual audited financial statements to avoid a failing composite score. Obtaining financial protection from institutions in this status is necessary to protect students and taxpayers from the negative consequences that can appear at institutions such as these.

The Department proposes to add § 668.171(c)(2)(xi) to establish a mandatory trigger for institutions that, as a result of Departmental action, the institution or any entity included in the financial statements submitted in the current or prior fiscal year is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement. This proposed mandatory trigger is similar to an existing discretionary trigger, but the existing trigger discusses actions of creditors in general and does not separately address creditor events linked to Departmental actions. We propose to make this trigger mandatory due to the negative financial consequences that can follow instances when these actions occur. Actions like these negatively impact the resources an institution has available for normal institutional operations and in the worst cases, events like these can lead to the closure of an institution. It is important for the Department to be aware of institutions subject to creditor events linked to this trigger as soon as possible and to offset the financial instability created by this situation by obtaining financial protection.

The Department proposes to add § 668.171(c)(2)(xii) to establish a mandatory trigger for when an institution declares a state of financial exigency to a Federal, State, Tribal, or foreign governmental agency or its accrediting agency. Institutions experiencing substantial financial challenges sometimes make such declarations in an effort to justify significant changes to the institution, including elimination of academic programs and reductions of administrative or instructional staff. Although such declarations are typically not made unless the institution experiences severe financial hardship, in many cases threatening the institution's survival, the Department's regulations do not currently require an institution to report such status to the Department. The Department may not learn about an institution's financial challenges until an accrediting agency or governmental agency informs us or we learn of it from the media. This proposed trigger is necessary to ensure that the institution quickly informs the Department of any declaration of financial exigency and enables us to obtain financial protection to protect the interests of students and taxpayers.

The Department proposes to add § 668.171(c)(2)(xiii) to establish a mandatory trigger for when an institution is voluntarily placed, or is required to be placed, in receivership. We currently have little ability to act when an institution is in this situation, which indicates severe financial distress. This trigger would allow us greater ability to require financial protection while a receiver manages the funds. In recent years the Department has seen three high profile institutional failures where institutions entered into a receivership and the Department was unable to obtain sufficient financial protection before they closed.

Financial Responsibility—Discretionary Triggering Events (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(d) contains several discretionary triggering events impacting an institution's financial responsibility. The current discretionary triggers are these instances:

- The institution is subject to an accrediting agency action that could result in a loss of institutional accreditation;
- The institution is found to have violated a provision or requirement in a security or loan agreement;
- The institution has a high dropout rate; The institution's State licensing or authorizing agency notifies the institution that it has violated a State licensing or authorizing agency requirement and that the agency intends to withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement;
- For its most recently completed fiscal year, a proprietary institution did not receive at least 10 percent of its revenue from sources other than title IV, HEA program funds; or
- The institution's two most recent official CDRs are 30 percent or greater.

Proposed Regulations: The Department proposes to amend § 668.171(d) to establish a stronger and more expansive set of discretionary triggering events that would assist the Department in determining if an institution is able to meet its financial or administrative obligations. This includes amending some existing triggers, moving some discretionary triggers into the list of mandatory triggers in paragraph (c) of this section, and adding new ones. Unlike the mandatory triggers, if any of the discretionary triggers occurs, the Department would determine if the event is likely to have a material adverse effect on the financial condition of the institution. If we make that determination, we would obtain financial protection from the institution. The proposed discretionary triggers are when:

- Under § 668.171(d)(1), the institution's accrediting agency or a Federal, State, local or Tribal authority places the institution on probation, issues a show-cause order, or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization, or eligibility;
- Under § 668.171(d)(2)(i) and (ii), except as provided in proposed § 668.171(c)(2)(xi), the institution is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing arrangement; and a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;
- Under § 668.171(d)(2)(iii), except as provided in proposed § 668.171(c)(2)(xi), any creditor of the institution or any entity included in the financial statements submitted in the current or prior fiscal year under § 600.20(g) or (h), § 668.23, or subpart L of this part takes action to terminate, withdraw, limit, or suspend a loan agreement or other financing arrangement or calls due a balance on a line of credit with an outstanding balance;
- Under § 668.171(d)(2)(iv), except as provided in proposed § 668.171(c)(2)(xi), the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or subpart L of this part enters into a line of credit, loan agreement, security agreement, or other financing arrangement whereby the institution or entity may be subject to a default or other adverse condition as a result of any action taken by the Department; or
- Under § 668.171(d)(2)(v), the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart L has a monetary judgment entered against it that is subject to appeal or under appeal;
- Under § 668.171(d)(3), the institution displays a significant fluctuation in consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds received by the institution that cannot be accounted for by changes in those title IV, HEA programs;
- Under § 668.171(d)(4), an institution has high annual dropout rates, as calculated by the Department;
- Under § 668.171(d)(5), an institution that is required to provide additional financial reporting to the Department due to a failure to meet the regulatory financial responsibility standards and has any of these

indicators: negative cash flows, failure of other liquidation ratios, cash flows that significantly miss projections, significant increased withdrawal rates, or other indicators of a material change in the institution's financial condition;

• Under § 668.171(d)(6), the institution has pending claims for borrower relief discharges from students or former students and the Department has formed a group process to consider claims and, if approved, those claims could be subject to recoupment. Our goal is to determine if the pending claims for borrower relief, when considered along with any other financial triggers, pose any threat to the institution to the extent that a potential closure could result. If we believe such a threat exists, we would seek financial protection to protect the interests of the institution's students and the taxpayers;

• Under § 668.171(d)(7), the institution discontinues academic programs that enroll more than 25 percent of students at the institution; Under § 668.171(d)(8), the institution closes more than 50 percent of its locations, or closes locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2;

• Under § 668.171(d)(9), the institution is cited by a State licensing or authorizing agency for failing to meet requirements;

• Under § 668.171(d)(10), the institution has one or more programs that has lost eligibility to participate in another Federal educational assistance program due to an administrative action;

• Under § 668.171(d)(11), at least 50 percent of the institution is owned directly or indirectly by an entity whose securities are listed on a domestic or foreign exchange and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law.

• Under § 668.171(d)(12), the institution is cited by another Federal agency and faces loss of education assistance funds if it does not comply with the agency's requirements.

Reasons: The Department is concerned that there are many factors or events that are reasonably likely to, but would not in every case, have an adverse financial impact on an institution. Compared to the mandatory triggers where the impact of an action or event can be reasonably and readily assessed (*e.g.,* where claims, liabilities, and potential losses are reflected in the recalculated composite score), the materiality or impact of the discretionary triggers is not as apparent and obtaining financial protection in every situation may not be appropriate. The Department would have to conduct a case-by-case review and analysis of the factors or events applicable to an institution to determine whether one or more of those factors or events has an adverse financial impact. In so doing, the Department may request additional information or clarification from the institution about the circumstances surrounding the factors or events under review. If we determine that the factors or events have a significant adverse effect on the institution's financial condition or operations, we would notify the institution of the reasons for, and consequences of, that determination. When an institution moves toward a status of financial instability or irresponsibility, it is necessary for the Department to be aware of that at the earliest possible time so that the situation can be addressed. These proposed discretionary triggers would be a tool with which the Department can pursue that charge.

While there are existing discretionary triggers, the Department is concerned that the current regulations are too limiting. They exclude too many situations where institutions with questionable financial stability could continue to operate without a streamlined mechanism for the Department to receive additional financial protection. The current triggers also do not include certain events that may be precursors to later more concerning events, such as an institution first being placed on probation and then later having to show cause with an accreditation agency. Having these discretionary triggers occur earlier in what could end up being a series of events that results in an institution's impaired financial stability increases the likelihood that the Department would be able to obtain financial protection from institutions while they still possess the resources to comply.

Absent stronger triggers, the Department is concerned that it will expose taxpayers to unnecessarily significant risk of uncompensated discharges tied to institutional closures or approved borrower defense claims. These new proposed triggers would also deter overly risky behavior, as institutions would know there is a possibility that they could be required to provide additional financial protection if they engage in behavior that leads to violating financing arrangements, an increase in borrower defense claims, or other actions that indicate broader financial problems with an institution.

The Department proposes to amend § 668.171(d)(1) by establishing a discretionary trigger for situations where the institution's accrediting agency or a Federal, State, local or Tribal authority places the institution on probation or issues a show-cause order or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization, or eligibility. We further propose to expand this requirement to include compliance actions initiated by governmental oversight and authorizing agencies since their actions can be equally impactful on the institution's status. This proposal is similar to two separate triggers that currently exist, and which were implemented in the 2019 Final Borrower Defense Regulations. This proposal expands and strengthens the trigger to include institutions that are placed on probation by their accrediting agency. This proposal uses similar language to a trigger linked to accrediting agency actions that was implemented in the 2016 Final Borrower Defense Regulations. The 2019 Final Borrower Defense Regulations kept accrediting agency actions as a discretionary trigger but eliminated probation as an action that would activate this trigger. We are now concerned that the existing trigger is too limited in considering the types of situations that represent significant concerns from accreditors, especially given the desire to request financial protection before an institution is on the brink of closure. It is not uncommon for institutions to be placed on probation before later ending up on show cause—the status that currently activates a discretionary trigger. Adding probation provides a path for the Department to take a closer look at an institution before it is at the most serious stage of accreditor actions. Institutions that are categorized by their accreditors as being on probation, having to show cause, or having their accreditation status placed at risk may be under stresses that would have a direct impact on their financial stability. The proposed trigger includes compliance actions initiated by governmental oversight or authorizing agencies. The current regulatory trigger, implemented in the 2019 Final Borrower Defense Regulations, is similar to this and is linked to a State licensing or authorizing agency taking action against the institution in which the agency will move to withdraw or terminate the institution's licensure or authorization. The proposal would combine the actions taken by an accrediting agency and those taken by governmental oversight or authorization agencies into one discretionary trigger. Because this is a discretionary trigger, the Department would be able to examine why an institution is placed on probation or other statuses to determine if they do indicate severe enough situations that financial protection is warranted.

The Department proposes to amend § 668.171(d)(2) by establishing a discretionary trigger for situations where the institution is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing arrangement; and a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees. This would capture situations that are similar to but not otherwise addressed by the mandatory trigger in proposed § 668.171(c)(2)(xi). This proposed discretionary trigger is similar to a discretionary trigger that was implemented in the 2016 Final Borrower Defense Regulations and was retained in the 2019 Final Borrower Defense Regulations. The proposed regulation would clarify that the rule includes not only the institution but also any entity included in the financial statements submitted in the current or prior fiscal year under §§ 600.20(g) or (h), 668.23, or subpart L of part 668.

The Department is concerned that the situations described in this trigger could result in an institution or associated entity suddenly needing to remove significant resources from the institution, such as to put up greater collateral or to address a sudden increase in the costs of servicing its debt. Such situations mean that an institution or associated entity that may have seemed financially responsible is now in a situation where they cannot afford their debt payments or may be at other risk of significantly negative financial outcomes. Moreover, including these items makes it possible for the Department to be aware earlier about the possible need for financial protection from the institution, improving our ability to protect students' and taxpayers' interests. However, given that institutions and their associated entities may have a significant number of creditors and contracts, we think it is prudent to treat this as a discretionary trigger so that the Department is able to better analyze the specific facts of the situation and then determine what degree of a threat to an institution's financial health it represents.

The Department proposes to further amend § 668.171(d)(2) by establishing a discretionary trigger for judgments awarding damages or other monetary relief that are subject to appeal or under appeal. Even if under appeal, such judgments against institutions or their owners should not be taken lightly because they may negatively impact the institution's financial strength in the future. Additionally, appeals of such judgments can and often do take years to resolve.

In the event the Department determines that the potential liability resulting from the judgment against the institution or entity could have a significant adverse effect on the institution, the Department believes it should be able to take sensible steps to protect the Federal fiscal interest during the pendency of those proceedings.

The Department proposes to amend § 668.171(d)(3) to establish a discretionary trigger for situations where the institution displays a significant fluctuation in consecutive award years, or a period of award years, in the amount of Federal Direct Loan or Federal Pell Grant funds received by the institution that cannot be accounted for by changes in those title IV, HEA programs. This proposed discretionary trigger is similar to a discretionary trigger that was implemented in the 2016 Final Borrower Defense Regulations and was subsequently removed in the 2019 Final Borrower Defense Regulations. The rationale at that time for removing this trigger was that fluctuation in these program funds did not indicate financial instability at the institution. Additionally, we stated that linking Pell Grant fluctuations to a discretionary trigger would harm low-income students because it would discourage institutions from serving students who rely on Pell Grants. However, we have observed that significant increases or decreases in the volume of Federal funds may signal rapid contraction or expansion of an institution's operations that may either cause, or be driven by, negative turns in the institution's financial condition or its ability to provide educational services. A significant contraction in aid received may indicate that an institution is struggling to attract students and may be at risk of closure. On the other hand, an institution that grows rapidly may present risks that its growth will outpace its capacity to serve students well. In the past, the Department has seen situations, particularly among publicly traded private for-profit institutions, where institutions experienced hypergrowth, resulting in significant concerns about the value delivered, followed a few years later by a significant contraction, and, in some cases, closure. Being aware of this status at an earlier time than provided under current regulations allows us to seek financial protection from the institution when we determine that it is necessary to protect students' and taxpayers' interests. In evaluating this trigger again, we have come to disagree with the way we framed our concerns around the effect of this trigger on low-income students in the 2019 regulation. The institutions with the largest shares of Pell Grant recipients are open access institutions, meaning they accept any qualified applicant without consideration of that student's finances. The institutions with the lowest shares of low-income students, by contrast, tend to be the institutions that reject the most students and have the greatest financial resources. Because these aspects are core to an institution's structure and mission, we do not see a circumstance where this trigger might affect an institution's decision on the type of students to serve. We also believe that it is important to ensure that low-income students have access to educational options at financially stable institutions offering a high-quality education and are not attending schools that may be at risk of sudden closure.

The Department proposes to amend § 668.171(d)(5) to establish a discretionary trigger for when an institution is required to provide additional interim financial reporting to the Department due to a failure to meet the regulatory financial responsibility standards or due to a change in ownership and has any of these indicators: negative cash flows, failure of other liquidation ratios, cash flows that significantly miss projections, significant increased withdrawal rates, or other indicators of a material change in the institution's financial condition. This proposed discretionary trigger is new. It would only apply to those institutions that fail to meet the financial responsibility standards in subpart L of part 668 or experience a change in ownership. Additionally, one or more of the indicators mentioned in the proposed rule—negative cash flows, failure of other liquidation ratios, cash flows that significantly miss the projections submitted to the Department, withdrawal rates that increase significantly, or other indicators of a material change in the financial condition of the institution—would have to be present for the trigger to apply. These indicators are of sufficient severity that it is important for the Department to examine the overall financial picture of the institution and determine if financial protection would be required to protect the interests of students and taxpayers.

The Department proposes to amend § 668.171(d)(6) to establish a discretionary trigger for when an institution has pending claims for borrower defense discharges from students or former students and the Department has formed a group process to consider claims. This would only apply in situations where, if approved, the institution might be subject to recoupment for some or all of the costs associated with the approved group claim. This proposed discretionary trigger is similar to a discretionary trigger that was implemented in the 2016 Final Borrower Defense Regulations and was subsequently removed in the 2019 Final Borrower Defense Regulations due to the burden placed on institutions with borrower defense claims, that were otherwise financially stable. At the time the Department argued that the amounts associated with an institution's borrower defense claims were estimates and could create false-positive outcomes resulting in a financially responsible institution having to inappropriately provide financial protection. Further, it was believed that this false-positive situation would impose a significant burden on the Department to monitor and analyze an institution that was financially responsible. However, we have reconsidered our position and adjusted the trigger to address some of our previously stated concerns. First, we have clarified that this trigger applies to group processes, not just decisions on individual claims. To date, groups of borrowers who have received loan discharges based upon borrower defense findings have been very large, representing tens of millions of dollars. The formation of the group process also occurs after the review of evidence and a response from the institution, so there is already some consideration of the relevant evidence before this trigger would potentially be met. Furthermore, this would be a discretionary trigger, so the Department would be required to assess to assess the institution's financial stability and determine if the borrower defense claims pose a threat to the institution's financial responsibility. That would mean that a group process involving a very small number of claims would be less likely to result in a request for financial protection, especially if the institution is large and otherwise financially stable. If it is determined that the group process is a real financial threat, it is only then that financial protection would be obtained from the institution. The Department believes it is important that institutions be held accountable when they take advantage of student loan borrowers. Unfortunately, the Department has often observed that an institution has closed long before a borrower defense process concludes. Asking for financial protection earlier in the process increases the likelihood that the Department would be able to offset losses from a group claim that is later approved.

The Department intentionally limits this trigger to situations where there may be a recoupment action. The borrower defense rule published on November 1, 2022,[130] notes that institutions would not be subject to recoupment in situations in which the claims would not have been approved under the standards in place when loans were first disbursed. Since the Department is concerned with whether an approved group claim could result in a significant liability for an institution that could create financial problems it would not be appropriate to have this trigger occur if the Department was not going to seek to recoup on that discharge if it is approved.

The Department proposes to add § 668.171(d)(7) by establishing a discretionary trigger for when an institution discontinues academic programs that affect more than 25 percent of enrolled students. This would be a new discretionary trigger. The Department is concerned that ending programs that affect a significant share of enrollment may be a precursor to an overall closure of the entire institution. While the ending of any program that negatively impacts any students is a matter of concern for the Department, we propose that the cessation of a program or programs that enroll 25 percent of an institution's students is the threshold that we would evaluate the institution's financial stability to ensure the termination of the programs has not negatively impacted the institution's financial status.

The goal of this trigger is to identify a situation in which the share of enrollment affected by a program or location closure is significant enough that it merits further institution-specific analysis to determine if the closure suggests a sufficiently large financial impairment where greater protection would be warranted. The Department chose this 25 percent threshold because we believe that could indicate a serious impairment to an institution's finances that merits a closer and case-by-case review. By way of example, we believe a threshold at this level would allow us to capture the situation where an institution closed all of its programs in a given degree level, only to later shutter the entire institution. As with other triggers, this ability to take a closer look is important because historically the Department has collected very little funds to offset the costs of closed school discharges after an institution goes out of business.

The Department proposes to add § 668.171(d)(8) by establishing a discretionary trigger for when an institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2. This would be a new discretionary trigger. This proposed discretionary trigger is similar to the trigger linked to an institution terminating academic programs in that an institution closing locations in this number may be a harbinger of an imminent closure of the institution. The Department chose the threshold of more than 25 percent of enrolled students for the same reasons that it selected that level for the discontinuation of academic programs.

This trigger considers closures both in terms of the number of campus closures as well as separately considering the amount of enrollment at locations. Both can be concerns. For instance, the Department has seen instances where an institution started closing a number of its additional locations before later shuttering its main campus. We propose the threshold of more than 50 percent of an institution's locations closing as that number of locations, regardless of the percentage of students impacted, may indicate an overall lack of financial stability. A negotiator in the negotiated rulemaking process stated that an institution may be strengthening its financial status by closing locations with zero or very low enrollment or usage. We acknowledge that and believe that our evaluation as a result of this proposed trigger would make that very determination. If an institution is made financially stronger, then financial protection would not be necessary but if the institution is made weaker by the closure of more than half of its locations, then we would obtain financial protection to ensure that students and taxpayers are protected in the event of an overall institutional closure. Similarly, this analysis could

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consider if the locations being closed are in fact sizable sources of an institution's enrollment versus being small satellite locations.

The Department proposes to add § 668.171(d)(9) by establishing a discretionary trigger for when an institution is cited by a State licensing or authorizing agency for failing to meet requirements. This captures less severe circumstances related to States than are addressed under the mandatory triggers. This proposed trigger was originally implemented in the 2016 Final Borrower Defense Regulations. The 2019 Final Borrower Defense Regulations kept the trigger but narrowed its scope to only be activated if the State licensing or authorizing agency stated that it intended to withdraw or terminate the licensure or authorization if the institution failed to take steps to comply with the requirement. The rationale at that time was that the trigger would be linked to a known and quantifiable event, in this case, the State agency's intent to withdraw or terminate the agency's licensure or authorization. Proposed § 668.171(d)(9) would return to the original concept where the Department would be aware and be able to obtain financial protection if an institution is cited by its State licensing or authorizing agency. We have observed some institutions with this pattern of behavior that have been unable to correct the area of noncompliance and find its normal operations are more difficult to pursue. An institution's eligibility to administer the title IV, HEA programs is dependent on obtaining and maintaining authorization or licensure from the appropriate State agency in its State. When a State agency cites an institution, its continued eligibility may be in jeopardy. This proposed discretionary trigger would allow the Department to evaluate the situation and determine if the State action is of the magnitude that financial protection would be required. In worst case scenarios, findings and citations of this type are precursors to the institution losing its authorization or licensure and the subsequent loss of eligibility to administer the title IV, HEA programs. Such a loss would have a negative impact on the institution's overall financial stability requiring the Department to make a determination if obtaining financial protection for the institution is warranted to protect students' and taxpayers' interests.

The Department proposes to add § 668.171(d)(10) to establish a discretionary trigger for when an institution has one or more programs that has lost eligibility to participate in another Federal educational assistance program due to an administrative action. This would be a new discretionary trigger and complements the mandatory trigger that occurs if the institution loses eligibility for another Federal educational assistance program. Other Federal agencies administer educational assistance programs including the Departments of Veterans Affairs, Defense, and Health and Human Services. Currently, when an institution has lost its ability to participate in an educational program administered by another Federal agency due to an administrative action by that agency, the Department of Education lacks a regulatory mechanism to include this fact in consideration of the institution's overall financial status, despite the fact that losing eligibility for a Federal educational assistance program can have a very significant impact on a school's revenue and financial stability. This proposed trigger is necessary to allow the Department to make a determination if obtaining financial protection for institutions in this situation is warranted to protect students' and taxpayers' interests.

The Department proposes to add § 668.171(d)(11) to establish a discretionary trigger for when at least 50 percent of the institution is owned directly or indirectly by an entity whose securities are listed on a domestic or foreign exchange and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal, or foreign law. This level of ownership is the threshold for blocking control over the institution's actions. This would be a new discretionary trigger. Institutions that find themselves in this category may have their normal operations and financial stability impacted negatively due to the public filing. In some scenarios, legal actions such as this may damage the institution's public reputation, thereby reducing the institution's enrollment, revenue, and profitability, which would result in the institution's financial stability being shaken. In worst case scenarios, these legal actions may result in the institution's closure and the ensuing negative consequences associated with closure. This proposed trigger is necessary to allow the Department to make a determination if obtaining financial protection for institutions facing legal actions such as this is warranted to protect students' and taxpayers' interests.

The Department proposes to add § 668.171(d)(12) to establish a discretionary trigger for when an institution is cited by another Federal agency for noncompliance with requirements associated with a Federal educational assistance program and that could result in the loss of Federal education assistance funds if the institution does not comply with the agency's requirements. An action by another Federal agency, such as the Department of Veterans Affairs placing an institution on probation, is a risk factor that could result in the loss of Federal funds. We propose this as a discretionary trigger since these actions may be fleeting.

Financial Responsibility—Recalculating the Composite Score (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(e) states when the Department will recalculate an institution's composite score. Specifically, we recalculate an institution's most recent composite score by recognizing the actual amount of the institution's liability, or cumulative liabilities as defined in regulation, as an expense, or by accounting for the actual withdrawal, or cumulative withdrawals, of owner's equity as a reduction in equity. The current regulations account for those expenses and withdrawals as follows:

- For liabilities incurred by a proprietary institution:
  - For the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount;
  - For the equity ratio, decreasing modified equity by that amount; and
  - For the net income ratio, decreasing income before taxes by that amount;
- For liabilities incurred by a non-profit institution;
  - For the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount;
  - For the equity ratio, decreasing modified net assets by that amount; and
  - For the net income ratio, decreasing change in net assets without donor restrictions by that amount; and
- For the amount of owner's equity withdrawn from a proprietary institution—
  - For the primary reserve ratio, decreasing adjusted equity by that amount; and
  - For the equity ratio, decreasing modified equity by that amount.

Proposed Regulations: The Department proposes to amend § 668.171(e) to expand when we would recalculate the institution's composite score. The proposed regulations would establish several mandatory triggers in

§ 668.171(c) that require a recalculation of the institution's composite score to determine if financial protection is required from the institution. The first of these triggers is found in proposed § 668.171(c)(2)(i)(A). It would require recalculation for institutions with a composite score of less than 1.5 (other than a composite score calculated as part of a change in ownership application) that are required to pay a debt or incur a liability from a settlement, arbitration proceeding, or a final judgment in a judicial proceeding. If the recalculated composite score for the institution or entity is less than 1.0 as a result of the debt or liability, the institution would be required to provide financial protection. The second mandatory trigger that would require recalculation is found in proposed § 668.171(c)(2)(i)(C) related to when the Department seeks to recoup the cost of approved borrower defense to repayment discharges. If the recalculated composite score for the institution or entity is less than 1.0 as a result of the liability sought in recoupment, the institution would be required to provide financial protection. The third mandatory trigger that would require recalculation is in proposed § 668.171(c)(2)(ii), which would require recalculation for proprietary institutions with a composite score of less than 1.5 where there is a withdrawal of owner's equity by any means. If the withdrawal results in a recalculated composite score for the institution or entity that is less than 1.0, the institution would be required to provide financial protection. Under § 668.171(e)(3), the composite score would also be recalculated in the case of a proprietary institution that has undergone a change in ownership where there is a withdrawal of owner's equity through the end of the institution's first full fiscal year. If the withdrawal results in a recalculated composite score for the institution or entity that is less than 1.0, the institution would be required to provide financial surety. The final mandatory trigger that would require a recalculation of an institution's composite score is found in proposed § 668.171(c)(2)(x), which would require that any institution's composite score be recalculated when (1) its audited financial statements reflect a contribution in the last quarter of the fiscal year and (2) it makes a distribution during the first two quarters of the next fiscal year. If the offset of the distribution against the contribution results in a recalculated composite score of less than 1.0, the institution would be required to provide financial protection.

Under proposed § 668.171(e), we would adjust liabilities incurred by the entity who submitted its financial statements in the prior fiscal year to meet the requirements of § 668.23, or in the year following a change in ownership, for the entity who submitted financial statements to meet the requirements of § 600.20(g) as follows:

- For the primary reserve ratio, we propose to increase expenses and decrease the adjusted equity by that amount;
- For the equity ratio, we propose to decrease the modified equity by that amount; and
- For the net income ratio, we propose to decrease income before taxes by that amount.

The proposed regulations under § 668.171(e) would also clarify how liabilities would impact a nonprofit institution's composite score. We would adjust liabilities incurred by any nonprofit institution or entity who submitted its financial statements in the prior fiscal year to meet the requirements of § 600.20(g), § 668.23, or subpart L of part 668 and described in §§ 668.171(c)(2)(i)(B) or (C) as follows:

- For the primary reserve ratio, we propose to increase expenses and decrease expendable net assets by that amount;
- For the equity ratio, we propose to decrease modified net assets by that amount; and
- For the net income ratio, we propose to decrease change in net assets without donor restrictions by that amount.

The proposed regulations would also clarify how withdrawal of equity would impact a proprietary institution's composite score. If the withdrawal of equity occurred for an entity who submitted its financial statements in the prior fiscal year to meet the requirements of § 668.23, or in the year following a change in ownership, we would adjust the entity's composite score calculation as follows:

- For the primary reserve ratio, we propose to decrease adjusted equity by that amount; and
- For the equity ratio, we propose to decrease modified equity by that amount.

For a proprietary institution that makes a contribution and distribution under proposed § 668.171(c)(2)(x), we would adjust the composite score as follows:

- For the primary reserve ratio, we propose to decrease adjusted equity by the amount of the contribution; and
- For the equity ratio, we propose to decrease modified equity by the amount of the contribution.

The proposed regulations would not modify the actual formula used to calculate the composite score.

Reasons: Proposed § 668.171(e) states how and when we would recalculate an institution's composite score based on certain mandatory triggers in proposed § 668.171(c). The recalculation is performed to address liabilities incurred under proposed § 668.171(c)(2)(i)(A) and (C); withdrawals of an owner's equity under proposed § 668.171(c)(2)(ii); and the accounting for contributions and distributions under proposed § 668.171(c)(2)(x). The proposed regulations describe the specific adjustments to the primary reserve ratio, the equity ratio, and the net income ratio that would result from the identified triggers. The proposed regulations would clarify that the adjustment would be made in the financial statements of the entity that submitted the audited financial statements for the prior fiscal year, or the entity that submitted the audited financial statements to comply with the regulatory requirements for a materially complete application following a change of ownership.

The multiple triggers identified in proposed § 668.171(e) would all diminish the entity's cash position, and the Department would perform a recalculation of the composite score to determine to what extent the triggering event actually impacts the institution's composite score. If we determine that the recalculated composite score is less than 1.0, meaning it has failed, we would require the institution to provide financial protection. In addition, by making an adjustment to the prior year's financial statements, the institution would be relieved from submitting interim audited financial statements when one of the identified triggering events occurs. The Department believes that the triggers identified in proposed § 668.171(e) that would require recalculation of the composite score (and which are described in § 668.171(c)(2)(i)(A) & (C), (ii), and (x)) pose a serious threat to the institution's financial stability. The threat is such that we believe that when the triggering event occurs an immediate determination of how the institution's composite score is impacted by the event must be made. To wait for the annual submission of the institution's audited financial statements would allow an excessive amount of time to elapse before this determination could be made based on the annual submission. When an institution encounters one of the identified triggering events, the quick recalculation of the composite score will inform us whether the triggering event has had minimal impact on the institution's financial stability or has had such a detrimental impact that financial protection becomes necessary to protect the interests of students and taxpayers.

Financial Responsibility—Reporting Requirements (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(f) lists the following conditions that must be reported to the Department under the existing financial responsibility reporting requirements:

- When an institution incurs a liability as described in § 668.171(c)(2)(i)(A);
- When there is a withdrawal of an owner's equity as described in § 668.171(c)(2);
- When an institution is subject to provisions relating to a publicly traded institution described in § 668.171(c)(2)(i)(A);
- When an institution's accrediting agency has issued an order, that if not satisfied, could result in the loss of accreditation;
- When an institution is subject to the loan agreement provisions in § 668.171(d)(2) and a loan violation occurs, the creditor waives the violation, or the credit imposes sanctions or penalties in exchange or as a result of granting the waiver;
- When an institution is informed that its State authorizing agency is terminating its authorization or licensure;
- When an institution is found to be non-compliant with the requirement that at least 10 percent of its revenues originate from non-title IV, HEA sources. The deadline for this notification is no later than 45 days after the end of the institution's fiscal year.

Proposed Regulations: The Department proposes to amend § 668.171(f) by adding several new events to the existing reporting requirements and expanding others. These events must be generally reported generally no later than 10 days following the event. Institutions would notify the Department of these events by sending an email to: *FSAFinancialAnalysisDivision@ed.gov.*

Under proposed § 668.171(f), the reportable events are situations where:

- The institution incurs a liability described in proposed § 668.171(c)(2)(i)(A);
- The institution is served with a complaint stating that the institution is being sued. An updated notice would be required after the lawsuit has been pending for 120 days;
- The institution receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any government entity;
- As described in proposed § 668.171(c)(2)(ii), there is a withdrawal of an owner's equity;
- As described in proposed § 668.171(c)(2)(x), the institution makes a contribution in the last quarter of its fiscal year and makes a distribution in the first or second quarter of the following fiscal year;
- As described in proposed §§ 668.171(c)(2)(vi) and in (d)(11), the institution is subject to the provisions related to a publicly listed entity;
- The institution is subject to any action by an accrediting agency, or a Federal, State, local, or Tribal authority, that is either a mandatory or discretionary trigger;
- As described in proposed § 668.171(c)(2)(xi), the institution is subject to actions initiated by a creditor of the institution;
- As described in proposed § 668.171(d)(2), the institution is subject to provisions related to a default, delinquency, or creditor event;
- As described in proposed § 668.171(c)(2)(vii), the institution fails the non-Federal funds provision. This notification deadline would be 45 days after the end of the institution's fiscal year;
- An institution or entity has submitted an application for a change in ownership under 34 CFR 600.20 that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding described in proposed § 668.171(c)(2)(i)(B) or (C). This reporting requirement is applicable to any action described herein occurring through the end of the second full fiscal year after the change in ownership has occurred.;
- As described in proposed § 668.171(d)(7), the institution discontinues academic programs that enrolled more than 25 percent of students;
- The institution declares a state of financial exigency to a Federal, State, Tribal, or foreign governmental agency or its accrediting agency;
- The institution, or an owner or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law or is subject to an order appointing a receiver, or appointing a person of similar status under foreign law;
- The institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2;
- The institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law.
- The institution fails to meet any of the standards in proposed § 668.171(b).

We also propose to remove current § 668.171(f)(3)(i)(A) which provides that the institution may demonstrate that the reported withdrawal of owner's equity was used exclusively to meet tax liabilities of the institution or liabilities of the institution's owners that result from income derived from the institution.

Reasons: Implementation of the proposed reportable events would make the Department more aware of instances that may impact an institution's financial responsibility or stability. The proposed reportable events are linked to the financial standards in § 668.171(b) and the proposed financial triggers in § 668.171(c) and (d) where there is no existing mechanism for the Department to know that a failure or a triggering event has occurred. Notification regarding these events would allow the Department to initiate actions to either obtain financial protection, or determine if financial protection is necessary, to protect students from the negative consequences of an institution's financial instability and possible closure. A school closure can have severe negative consequences for students including disruption of their education, delay in completing their educational program, and a loss of academic credit upon transfer. Furthermore, negative consequences of a school's closure not only impact students but have negative effects on taxpayers as a result of the Department's obligation to pay student loan discharges of borrowers impacted by the closure and our inability to collect liabilities owed to the Federal government due to the insolvency of the closed institution.

Current § 668.171(f)(3)(i)(A) provides that the institution may demonstrate that the reported withdrawal of owner's equity was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution. We propose to remove this provision because taxation, whether it is an individual or institutional liability, is not significantly different from other liabilities borne by the individual or institution. Therefore, we do not see the necessity to treat taxation differently when examining a withdrawal of owner's equity for financial responsibility purposes.

Directed Questions

We request that commenters submit feedback through the comment process about the requirement under proposed § 668.171(f)(1)(iii) that an institution must report to the Department when it receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any government entity (local, State, Tribal, Federal, or foreign). As proposed, § 668.171(f)(1)(iii) is a reporting requirement only and is not included as a mandatory triggering event in § 668.171(c) nor as a discretionary triggering event in § 668.171(d). We believe that an institution subject to an action or actions described here must alert the Department so that we can consider these actions in any compliance activity we undertake. We are especially interested in receiving input as to whether an investigation as described in § 668.171(f)(1)(iii) warrants inclusion in final regulations as either a mandatory or discretionary financial trigger. If inclusion would be warranted, we would ask for suggestions regarding what actions associated with the investigation would have to occur to initiate the financial trigger. We also request commenters provide any other information, thoughts, or opinions on this issue.

Financial Responsibility—Public Institutions (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(g) states what a public domestic or foreign institution must do to be considered financially responsible. These requirements include notifying the Department that the institution is designated a public institution by the appropriate foreign or domestic government entity.

Proposed Regulations: The Department proposes to amend § 668.171(g) by adding paragraph (g)(1)(ii), which would also require a public institution to provide to the Department a letter from an official of the government entity or other signed documentation acceptable to the Department. The letter or documentation must state that the institution is backed by the full faith and credit of the government entity. The Department also proposes similar amendments to paragraph (g)(2)(ii) which is applicable to foreign institutions. We propose to add paragraph (g)(2)(iv) which would subject a foreign institution to the mandatory triggers described in paragraph (c) of this section, and the discretionary triggers described in paragraph (d) of this section where the Department has determined that the triggering event would have significant adverse effect on the financial condition of the institution. The Secretary would treat the foreign public institution subject to these triggers in the same way as a domestic public institution, which could include heightened cash monitoring or provisional certification.

Reasons: The Department has long held that public institutions establish financial responsibility because of having full faith and credit backing by their State or appropriate government entity. That backing means that if the institution were to run into financial trouble the State or appropriate government entity is able to step in and provide the necessary financial support. As a result, the Department does not typically collect surety from a public institution. However, the current regulations do not explicitly require a demonstration of full faith and credit backing by public institutions. That creates a risk that an institution could be deemed public but not actually have the inherent financial backing needed to assuage concerns if the institution were to face financial troubles. The proposed change to § 668.171(g) would allow the Department to secure a document guaranteeing that the public institution is backed by the full faith and credit of the relevant government entity. This change would ensure that we can collect any liability from the entity making the guarantee, thereby protecting taxpayers and students.

Financial Responsibility—Audit Opinions and Disclosures (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(h) states that even if an institution meets all of the financial responsibility factors listed in at § 668.171(b), the Department does not consider the institution to be financially responsible if the institution's audited financial statements include an opinion that was adverse, qualified, disclaimed, or the financial statements contain a disclosure in the notes that there is substantial doubt about the institution's ability to continue as a going concern. The Department may determine whether the aforementioned opinions have a significant bearing on the institution's financial condition or whether the going concern issues have been alleviated and may then act on that determination and obtain financial protection from the institution.

Proposed Regulations: The Department proposes to amend § 668.171(h) to clarify that an institution would not be considered financially responsible, even if all financial responsibility factors in § 668.171(b) are met, if the notes to the institution's or entity's audited financial statements include a disclosure about the institution or entity's diminished liquidity, ability to continue operations, or ability to continue as a going concern. If we determine that the auditor's adverse, qualified, or disclaimed opinion does not have significant bearing on the institution's financial condition, we may decide that the institution is financially responsible. Similarly, if we determine that the institution has alleviated the condition(s) in the disclosure (diminished liquidity, ability to continue operations, or ability to continue as a going concern), we may decide the institution is financially responsible. The Department would determine, on its own, whether these issues are alleviated even when the disclosure states that alleviation has been completed.

Reasons: The Department must have the ability to make its own determination regarding any issues that impact an institution's diminished liquidity, ability to continue operations, or ability to continue as a going concern. In these cases, the Department seeks financial statement disclosures whereby auditors agree with the institution's plan to address such issues or note that the institution has successfully addressed them. However, the Department would determine, on its own, if the issues identified by the auditor have been alleviated by the institution.

Financial Responsibility—Past Performance (§ 668.174)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.174 states that an institution is not financially responsible if it has been limited, suspended, terminated, or entered into a settlement agreement to resolve any of those actions initiated by the Department or a guaranty agency. Further, the regulations state that the institution is not financially responsible if the institution has an audit finding in either of its two most recent compliance audits, or a Departmental program review finding for its current fiscal year or the prior two fiscal years, that resulted in the institution being required to repay an amount greater than five percent of the title IV, HEA program funds received during the year covered by that audit or program review. Also, an institution is not financially responsible if it is cited during the preceding five years for not submitting on-time, acceptable compliance audits and financial statements. Finally, an institution is not financially responsible if it has failed to satisfactorily resolve any compliance problems identified in an audit or program review.

Proposed Regulations: The Department proposes to amend § 668.174(a) to clarify that the time period that the Department would evaluate for purposes of determining if the institution had a program review finding resulting in a requirement to repay an amount greater than five percent of title IV, HEA program funds received, is the institution's fiscal year in which the Department issued a report, including a Final Program Review Determination (FPRD) report, and the two prior fiscal years, regardless of the years covered by the report.

Reasons: This clarification would address confusion about whether the period for past performance relates to the period in which the conduct that gives rise to the past performance finding or the date of issuance of the FPRD. Because it can take some time to issue a Program Review Report (PRR) and finalize it into an FPRD, the proposed amendment would clarify that the time period for past performance does not refer to when the finding occurred, but to when we issue the FPRD that establishes the liability for that finding. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate.

Financial Responsibility—Past Performance (§ 668.174)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: None.

Proposed Regulations: The Department proposes to add § 668.174(b)(3) to state that an institution is not financially responsible if an owner who exercises substantial control, or the owner's spouse, has been in default on a Federal student loan, including parent PLUS loans, in the preceding five years, unless—

- The defaulted Federal student loan has been fully repaid and five years have elapsed since the repayment in full;
- The defaulted Federal student loan has been approved for, and the borrower is in compliance with, a rehabilitation agreement and has been current for five consecutive years; or
- The defaulted Federal student loan has been discharged, canceled or forgiven by the Department.

Reasons: Defaulting on a Federal student loan is a serious failure of financial responsibility that relates to the title IV, HEA programs. The Department holds school owners to a higher standard than we hold students, and we expect school owners to be more financially responsible than the students who attend their schools. A student or parent borrower may immediately reestablish eligibility to receive an award under the Title IV, HEA program by rehabilitating, consolidating, or repaying defaulted Federal student loans in full, but this is not an appropriate standard to apply to a school's owner. The Department proposes to apply a higher standard to school owners who have defaulted on a Federal student loan to ensure they have established a long-term track record of loan repayment and financial responsibility before the Department would consider the school owner financially responsible under the past performance regulations in § 668.174. This proposed regulation would ensure that school owners cannot buy their way out of a past performance violation related to their own Federal student loan default(s) by merely rehabilitating their defaulted Federal student loans or repaying them in full.

This regulation would apply to Federal student loans, including parent PLUS loans, borrowed by a school owner and by a school owner's spouse. This regulation would recognize that a school owner should be aware that a spouse is in default on a Federal student loan and the regulation holds the school owner responsible for the spouse's Federal student loan default. However, the regulation would also recognize that a school owner is not responsible for managing the family budgets of all of their family members, as that term is defined in § 600.21(f), nor for ensuring that all of their family members repay their Federal student loans.

Financial Responsibility—Alternative Standards and Requirements (§ 668.175)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.175(c) explains how an institution that has failed the financial responsibility requirements under the general standards and provisions at § 668.171 can qualify under an alternate standard. One of the requirements an institution must meet is to not have an audit opinion that is adverse, qualified or disclaimed or that includes a disclosure stating that there is substantial doubt about the institution's ability to continue as a going concern as described under § 668.171(h).

Proposed Regulations: Under proposed § 668.175(c), the Department would clarify that a disclosure, as required under the applicable accounting or auditing standards, about the institution's liquidity, ability to continue operations, or ability to continue as a going concern, places the institution in the status of not being financially responsible. We would then require the institution to pursue an alternate standard of financial responsibility to comply with the associated regulatory requirements under § 668.175. Proposed § 668.175(f) would further clarify that an institution which is not financially responsible could be permitted to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years and providing the Department an irrevocable letter of credit for an amount determined by the Department. This requirement would not apply to public institutions. Institutions would be required to remedy the issue(s) that gave rise to the failure of financial responsibility.

Reasons: This proposed amendment to § 668.175(c) clarifies that an auditor's disclosure may include not only a disclosure expressing doubt about the institution's ability to continue as a going concern but may also include a disclosure about the institution's liquidity or its ability to continue operations. An audit disclosure such as this would demonstrate that the institution is not financially responsible, and we would obtain financial protection. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate. Additionally, the proposed regulation clarifies that an institution that is not financially responsible due to noncompliance with the requirements under § 668.171(b)(2) or (3) must remedy those areas of noncompliance in order to demonstrate compliance with financial responsibility requirements rather than rely upon other alternatives.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.175(f) permits an institution that is not financially responsible to participate in title IV, HEA programs under a provisional certification, as long as it (1) Provides the Department an irrevocable letter of credit that is acceptable and payable to the Secretary, or other financial protection, for an amount determined by the Department that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution that the Department determines is backed by the full faith and credit of the State; (2) Demonstrates that it was current on its debt payments and has met all of its financial obligations, for its two most recent fiscal years; and (3) Complies with the provisions under the zone alternative.

Proposed Regulations: The Department proposes to add a condition in § 668.175(f)(2)(ii) that would require an institution to remedy the issue(s) that gave rise to its failure under § 668.171(b)(2) and (3).

Reasons: This proposed amendment is consistent with the proposed amendments to § 668.175(c) because it would help to ensure that an institution that is not financially responsible due to failing to meet the requirements under § 668.171(b)(2) or (3) must remedy those areas of noncompliance in order to participate in the title IV, HEA programs under a provisional certification. This proposed language replaces the current language in § 668.175(f)(2)(ii) which states that an institution pursuing this avenue must demonstrate it was current on debt payments and met all financial obligations. The proposed language clarifies that all factors stated in 668.171(b)(2) and (3), which include being current on debt payments and meeting financial obligations, must have been remedied to the Department's satisfaction for the purpose of obtaining provisional certification.

Financial Responsibility—Change in Ownership Requirements (§ 668.176)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.15 originally established the financial responsibility requirements for all institutions participating, or seeking to participate, in the title IV, HEA programs. In 1997, subpart L was implemented and established revised financial responsibility factors for institutions participating in the title IV HEA programs but did not address the factors that would specifically be applied to institutions undergoing a change in ownership. The Department continued to apply the financial responsibility rules still existing in § 668.15 to change in ownership situations even though those regulations were not specific to such institutions.

Proposed Regulations: The Department proposes to remove § 668.15 and reserve that section. We propose to redesignate current § 668.176 as § 668.177. The proposed new § 668.176 would contain all updated financial responsibility requirements applicable to institutions undergoing a change in ownership.

Under proposed § 668.176(b), an institution undergoing a change in ownership would be required, as a part of their materially complete application, to submit audited financial statements of the institution's new owner's two most recently completed fiscal years prior to the change in ownership. These statements must be prepared and audited at the highest level of unfractured ownership (meaning 100 percent direct or indirect ownership of the institution) or at the level required by the Department. If the institution's new owner does not have two years of acceptable audited financial statements, or in circumstances where no new owner obtains control, but the combined new ownership exceeds the ownership share of the existing ownership, the institution would have to provide financial protection in the form of a letter of credit or cash to the Department in the amount of 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

Under proposed § 668.176(b)(3), an institution must demonstrate it is a financially responsible. To comply with this requirement a for-profit institution would be required to:

- Demonstrate it has not had operating losses in either or both of its two latest fiscal years that in sum, result in a decrease in tangible net worth exceeding 10 percent of the institution's tangible net worth at the beginning of the first year of the two-year period. The Department may calculate an operating loss for an institution by excluding prior period adjustments and the cumulative effect of changes in accounting principle;
- Demonstrate it has, for its two most recent fiscal years, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities;
- Document it has a passing composite score and meets the other financial requirements of part 668, subpart L for its most recently completed fiscal year.

To demonstrate it is financially responsible, a nonprofit institution would be required to:

- Demonstrate it has, at the end of its two most recent fiscal years, positive net assets without donor restrictions. The Department proposes to exclude all related party receivables/other assets from net assets without donor restrictions and all assets classified as intangibles in accordance with the composite score;
- Document it has not had an excess of net assets without donor restriction expenditures over net assets without donor restriction revenues over both of its two latest fiscal years that results in a decrease exceeding 10 percent in either the net assets without donor restrictions from the start to the end of the two-year period or the net assets without donor restriction in either one of the two years;
- Document it has a passing composite score and meets the other financial requirements of part 668, subpart L for its most recently completed fiscal year.

Under proposed § 668.176(b)(4), a for-profit or nonprofit institution that is not financially responsible under proposed § 668.176(b)(3) would be required to provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year's title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

Proposed § 668.176(c) would allow the Department to determine that the institution is not financially responsible following a change in ownership if the amount of debt assumed to complete the change in ownership requires payments (either periodic or balloon) that are inconsistent with available cash to service those payments based on enrollments for the period prior to when the payment is or will be due. An institution in this status would be required to provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year's title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

Under proposed § 668.176(d), to meet the requirements for a temporary provisional PPA following a change in ownership, as described in § 600.20(h)(3)(i), the Department would continue to require a proprietary or nonprofit institution to provide us with a same day balance sheet for a proprietary institution or a statement of financial position for a nonprofit institution. As part of the same day balance sheet or statement of financial position, the institution would be required to include a disclosure that includes all related-party transactions and such details that would enable the Department to identify the related party.

If the institution fails to meet the requirements in proposed § 668.176(d)(1)(i), the institution would be required to provide financial protection in the form of a letter of credit or cash to the Department in the amount of at least 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, or an amount determined by the Department, and would be required to follow the zone requirements of § 668.175(d).

For a public institution, the institution would be required to have its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity, or follow the requirements of this section for a proprietary or nonprofit institution.

Reasons: Current regulations related to the assessment of financial responsibility for institutions undergoing a change in ownership are spread out across § 668.15 and subpart L of part 668, where the composite score rule resides. The result of having requirements in multiple places is that it is not easy to identify which elements from across both sections apply to institutions undergoing a change in ownership. We are proposing to consolidate and revise the section to align with the Department's current practice in processing and applying financial responsibility factors to change in ownership applications. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate. The proposed new regulatory section states with a new level of clarity exactly what institutions would have to do to demonstrate financial responsibility when undergoing a change in ownership.

We additionally propose a change with respect to how the Department would test the financial responsibility of an institution undergoing a change in ownership. Under current regulations, we primarily evaluate the entity acquiring the institution by examining its same day balance sheet or statement of financial position. If the new owner does not have two years of audited financial statements, but has one year of audited financial statements, we require financial protection at an amount that would be a least 10 percent of the institution's title IV, HEA volume. This is the same minimum amount the Department chooses for institutions that seek the provisional certification alternative in § 668.175(f) for an institution that is failing to meet the standards of financial responsibility. Under the proposed regulations, we would test the new owner's financial statements and would require financial protection if those financial statements fail financial responsibility standards as part of the change in ownership application rules in § 600.20(g). To make that determination we would evaluate the composite score or other financial factors on those financial statements.

In addition, the minimum financial protection for the failure to meet the financial responsibility standards for the submission of the same day balance sheet or statement of financial protection for compliance with § 600.20(h) would be increased from the current 10 percent to 25 percent. We chose this amount because it is what we commonly require for a new owner who does not have two years of financial statements and we think the associated risk levels are similar.

The Department's interest in establishing a clear picture of an institution's ownership is crucial to our making determinations on the financial stability of the institution as it emerges from the change in ownership. During this period of change, it is imperative that we are able to obtain a level of financial protection sufficient enough to protect the students who are impacted by the change in ownership, if necessary. It is also important to protect the interests of the taxpayers as we extend the institution's eligibility to participate in the title IV, HEA programs under the new owner's control. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate.

This proposal would also address challenges we have encountered in evaluating the financial statements of institutions undergoing changes in ownership, including by clarifying that financial statements must be provided at the level of highest unfractured ownership (meaning 100 percent direct or indirect ownership of the institution) or at the level determined by the Department; clarifying how a situation where no individual new owner obtains control, but the combined ownership of the new owners is equal to or exceeds the ownership share of the existing ownership will be handled, and clarifying what institutions undergoing a change in ownership must do to receive a temporary provisional PPA following the change in ownership. This proposed rule would enable us to ensure that entities acquiring an eligible institution demonstrate that they are financially responsible by the mechanisms detailed in this proposed regulation or provide financial protection. The proposed approach provides a more predictable and robust examination of financial responsibility for changes in ownership.

Standards of Administrative Capability (§ 668.16)

Administrative Capability—Financial Aid Counseling (§ 668.16(h))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: The current regulations under § 668.16(h) require that, for an institution to be administratively capable, the institution must provide adequate financial aid counseling to eligible students who apply for title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Department considers whether its counseling includes information regarding the source and amount of each type of aid offered, and the method by which aid is determined and disbursed, delivered, or applied to a student's account. The institution must also provide counseling that includes the rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package.

Proposed Regulations: The Department proposes to amend paragraph § 668.16(h) to include the details of what should be included in the financial aid communications given to students. We are also proposing to require clear and accurate information about financial aid, alongside existing requirements around what constitutes adequate financial aid counseling. We propose that financial aid counseling and financial aid communications advise students and families to accept the most beneficial types of financial assistance available to them. We further propose to establish requirements with respect to financial aid counseling and communications as follows:

- We propose to require that institutions provide information regarding the cost of attendance of the institution, including the individual components of those costs and a total of the estimated costs that will be owed directly to the institution, for students, based on their enrollment status and attendance.
- Currently the regulation requires the source and amount of each type of aid offered. We propose to add to this provision that each source of aid, which could include Title IV, HEA assistance, private loans, income-share agreements, and tuition payment plans, be separated by the type of the aid and whether it must be earned or repaid.
- We propose to require that institutions provide information regarding the net price, as determined by subtracting the amount of each type of aid offered from the cost of attendance.
- Currently the regulation requires financial aid counseling to include the method by which aid is determined and disbursed, delivered, or applied to a student's account. We propose to add to this provision that the counseling must also include instructions and applicable deadlines for accepting, declining, or adjusting award amounts.

Reasons: The Department proposes amendments to the requirement to provide adequate financial aid counseling under § 668.16(h) because we want to ensure that students understand the cost of attendance for the program, including costs charged directly by the institution, and the financial aid offered by an institution. The Department already requires institutions to provide adequate financial aid counseling to their students, but we realize that some financial aid offers may be confusing. Providing students with unclear, confusing, or misleading financial aid offers can undo the benefits of financial aid counseling and result in a student being unable to apply the concepts explained through financial aid counseling to their own financial situation. This in turn jeopardizes their ability to make an informed decision whether to enroll in a given program and how much to borrow in student loans.

The requirements added into this section thus establish requirements for what would be considered sufficiently clear communication, including on financial aid offers. These changes emphasize areas where the Department has seen problematic materials in the past, such as aid offers that fail to explain the full cost of attendance or use confusing terminology that makes it difficult to tell whether or not the aid being offered to the student must be repaid. The items included in these proposed regulations are also informed by the Department's experience in crafting a model financial aid offer, known as the College Financing Plan to address one aspect of financial aid communications. The College Financing Plan reflects feedback from consumer testing and an emphasis on clarity and is used by roughly half of institutions. Some of the items included in these proposed rules are already included in the College Financing Plan and, as such, using the College Financing Plan would be one way for institutions to ensure they meet some of the standards we propose here.

Administrative Capability—Debarment or Suspension (§ 668.16(k))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: Current regulations under § 668.16(k) require that for an institution to be administratively capable, it is not, and does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485) that is debarred or suspended under Executive Order 12549 or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4. Section 668.16(k) also requires that the institution not engage in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under Executive Order 12549 or the FAR, 48 CFR part 9, subpart 9.4.

Proposed Regulations: We propose to maintain the current requirements and add new requirements under a revised § 668.16(k)(2) that would prohibit an institution from having any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or previously exercised substantial control over the institution as defined in § 668.174(c)(3), who has been:

- Convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, Tribal, or local government funds, or administratively or judicially determined to have committed fraud or any other material violation of law involving those funds.
- Is a current or former principal or affiliate (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or exercised substantial control as defined in § 668.174(c)(3), of another institution whose misconduct or closure contributed to liabilities to the Federal government in excess of 5 percent of that institution's title IV, HEA program funds in the award year in which the liabilities arose or were imposed.

Reasons: The Department proposes amendments to § 668.16(k)(2) to improve institutional oversight of the individuals that are hired to make significant decisions that could have an impact on the institution's financial stability and its administration of title IV, HEA funds. Institutions participating in the title IV, HEA programs have a fiduciary responsibility to safeguard title IV, HEA funds and ensure those funds are used to benefit students and must meet all applicable statutory and regulatory requirements. An institution's ability to meet these responsibilities is impaired if a principal, employee, or third-party servicer of the institution committed fraud involving Federal, State, or local funds, or engaged in prior conduct that caused a loss to the Federal Government.

A similar risk occurs if one of the aforementioned individuals has been convicted of, or had pled nolo contendere or guilty to, a crime, involving the acquisition, use, or expenditure of a Federal agency or State, Tribal, or local government. To mitigate this risk, we are adding this component to the administrative capability standards. We expect institutions to thoroughly examine the background of its principals, employees, affiliates, and third-party servicers as part of this compliance. We believe the school must take action or risk being deemed administratively incapable.

Administrative Capability—Negative Actions (§ 668.16(n))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: Current regulations under § 668.16(n) provide that an institution is administratively capable if it does not otherwise appear to lack the ability to administer title IV, HEA programs competently.

Proposed Regulations: We propose to add a new § 668.16(n) to require that an institution has not been subject to a significant negative action, or a finding by a State or Federal agency, a court or an accrediting agency where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive, and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution. We propose to redesignate current § 668.16(n) as proposed § 668.16(v).

Reasons: The Department proposes that an institution is not administratively capable if it has been subject to a significant negative action or a finding by a State or Federal agency, a court or an accrediting agency where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive, and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution. § 668.16(n). Such measures are an indication of potentially serious problems with the institution's administrative functions. Adding this proposed section would provide the Department the ability to consider whether those circumstances warrant compliance actions and better align the oversight work across the regulatory triad of States, the Federal government, and accreditation agencies. Examples include provisionally recertifying the institution with applicable conditions on its eligibility, obtaining protection against potential losses to the government, placing an institution on a different method of payment (such as heightened cash monitoring), or terminating title IV, HEA eligibility due to negative actions of an outside public agency. For example, if the United States Department of Veterans Affairs (VA) took a significant negative action against an institution and that institution lost its ability to participate in the VA education and training benefits programs, the Department could use the VA's determination as a factor in assessing an institution's administrative capability. This would more clearly establish a link between administrative capability and when another Federal agency has revoked an institution's eligibility for one or more of their programs. Other examples are when a State levies sanctions against an institution or an accrediting agency places an institution on probation, or its equivalent, based on an ongoing consumer protection issue.

Administrative Capability—High School Diploma (§ 668.16(p))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: Current regulations under § 668.16(p) provide that an institution must develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

Proposed Regulations: We propose to maintain the current requirement that an institution must develop and follow adequate procedures to evaluate the validity of a student's high school completion if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. We propose to update the references to high school completion in the current regulation to high school diploma.

Under proposed § 668.16(p)(1) we would add requirements for adequate procedures to evaluate the validity of a student's high school diploma when the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education to include the following:

- Obtaining documentation from the high school that confirms the validity of the high school diploma, including at least one of the following: a transcript, written descriptions of course requirements, or written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school;
- If the high school is regulated or overseen by a State agency, Tribal agency, or Bureau of Indian Education, confirming with or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency; and
- If the Secretary has published a list of high schools that issue invalid high school diplomas, confirming that the high school does not appear on that list.

Under proposed § 668.16(p)(2) a high school diploma would not be valid if it:

- Did not meet the applicable requirements established by the appropriate State agency, Tribal agency, or Bureau of Indian Education in the State where the high school is located and, if the student does not attend in-person classes, the State where the student was located at the time the diploma was obtained.
- Has been determined to be invalid by the Department, the appropriate State agency in the State where the high school was located, or through a court proceeding.
- Was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under § 600.2.
- Was obtained from an entity that maintains a business relationship or is otherwise affiliated with the eligible institution at which the student is enrolled and that entity is not accredited.

Reasons: Ensuring that students have a valid high school diploma is a critical part of maintaining integrity in the title IV, HEA financial aid programs. Failure to ensure that a student is qualified to train at a postsecondary level often results in students withdrawing from institutions after incurring significant debt and investing time and personal resources. The Department has seen multiple leaders of institutions face significant financial liabilities and even jail time for receiving Federal aid for students who did not have a valid high school diploma. However, the Department believes that the existing requirements for an institution to have procedures in place to evaluate the validity of a high school diploma may not be sufficient. These proposed regulations would provide institutions with additional information if necessary to determine the validity of a high school diploma when the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

With regard to how these proposed requirements would apply to certain private religious secondary schools, as noted in § 668.16(p)(1)(ii), the process of confirming or receiving documentation from the State or Tribal agency or the Bureau of Indian Education only applies to high schools that are regulated or overseen by one of those entities. Moreover, the proposed requirements establishing when a high school diploma is not considered valid in § 668.16(p)(2)(i) note that the school would have to meet applicable requirements established by the State or Tribal agency or the Bureau of Indian Education. If those entities do not have applicable requirements for the type of school in question, then the diplomas awarded by the school would not be considered invalid simply for that reason. The institution would still need to ensure that the diploma meets the other requirements of 668.16(p)(2).

The approach in this NPRM addresses concerns raised during negotiated rulemaking that private secondary schools with a demonstrated ability to prepare students for success in title IV, HEA institutions would be considered to not offer valid diplomas simply because they are not regulated by a State. If private secondary schools are not subject to State agency oversight, then the requirement to receive documentation from a State agency would not apply.

In conducting its oversight activities, the Department has seen an increase in institutions directing students to questionable entities to obtain diplomas and institutions accepting questionable diplomas without conducting a proper review of the issuing entity. These actions not only undermine the integrity of the title IV, HEA programs, but also cause undue harm to students who are not actually prepared to succeed at the postsecondary level. These amendments would protect students, postsecondary institutions, and the taxpayer investment in postsecondary education by ensuring adequate standards are in place for institutions to evaluate high school diplomas.

Administrative Capability—Career Services (§ 668.16(q))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.16(q) to determine if an institution is providing adequate career services to eligible students who receive title IV, HEA program assistance. In making this determination, the Department would consider:

- The share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation.
- The number and distribution of career services staff.
- The career services the institution promises to its students.
- The presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution.

Reasons: Students regularly indicate on surveys [131] that getting a job is one of their top reasons for pursuing postsecondary education. While there are many non-financial benefits to education beyond high school, being able to find a job is critical for many students who have to repay debt they acquired to attend a program. Many programs explicitly market their offerings with employment in mind, telling students about the services they will help provide for students to find a job, the connections with employers, and the alignment of curricula with employer needs, to identify a few examples. The Department proposes to require adequate career counseling services under new § 668.16(q) because we believe it is critical that institutions have sufficient career services to help their students find jobs and make good on any commitments conveyed about this kind of assistance they can provide. We are not proposing any required ratios for the number of career services staff, but rather proposed § 669.16(q) would ensure that institutions have established a connection between the commitments they make to students and the services they actually provide.

Finally, we believe that when appropriate, an institution should establish or develop partnerships with recruiters and employers. Institutions that make commitments about employment and do not provide career services or do not have established partnerships with recruiters and employers may leave students unprepared to enter the job market and obtain employment upon completion. Students expect to have access to career services as promised as they transition from their programs into the workforce. An institutions failure to provide such career services may indicate a lack of administrative capability.

[131] "Why Higher Ed?" *available at stradaeducation.org/report/why-higher-ed/.*

Administrative Capability—Accessible Clinical or Externship Opportunities (§ 668.16(r))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: The Department proposes to add a new § 668.16(r) to require that an institution provide students with geographically accessible clinical, or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation within 45 days of the successful completion of other required coursework.

Reasons: We propose to require institutions to provide accessible clinical or externship opportunities related to relevant credentialing or licensure requirements under proposed § 668.16(r) because we are aware through program reviews and student complaints that some institutions do not make such opportunities broadly accessible to students, even when students are required to complete an externship or clinical to earn a degree or certificate. In these cases, students may be left to identify their own clinicals or externships. We are also aware of numerous instances where students have been offered a clinical or externship that is geographically distant and inaccessible from the student's location. We are aware of other instances where the work performed at the clinical or externship offered by an institution does not assist the student in meeting the requirements for credentialing or licensure. Therefore, the Department proposes these amendments to require institutions to provide geographically accessible clinical or externship opportunities related to and required for completion of the credential or licensure related to their program. An institution would be considered in compliance with this provision if a student turns down the offer of the externship or clinical opportunity so long as the opportunity offered otherwise meets the requirements of this section.

Administrative Capability—Disbursing Funds (§ 668.16(s))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.16(s) to require that an institution disburse funds to students in a timely manner that would best meet the students' needs. The Secretary would not consider the manner of disbursements to be consistent with students' needs, if, among other conditions:

- The Secretary is aware of multiple verified and relevant student complaints.
- The institution has high rates of withdrawal attributable to delays in disbursements.
- The institution has delayed disbursements until after the withdrawal date requirements in § 668.22(b) and (c).
- The institution has delayed disbursements with the effect of ensuring an institution passes the 90/10 ratio.

Reasons: By law, students have a right to receive their Federal financial aid including amounts in excess of the cost of direct expenses, such as tuition and fees. When a student does not receive their funds in a timely manner, they may struggle to stay enrolled due to an inability to cover costs like food, housing, and transportation. They may also struggle to succeed in a course because of an inability to purchase required textbooks. Students may also accrue expenses which may affect their ability to remain in school, and ultimately graduate. Failing to disburse financial aid in a timely manner thus results in an institution holding on to funds that are not theirs for longer than is appropriate resulting in a detriment to its students. Therefore, the Department proposes that an institution would not be considered administratively capable if the Secretary determines that the institution failed, including for reasons related to the use of a third-party servicer, to disburse funds to students in a timely manner that will best meet the student's needs.

Administrative Capability—Gainful Employment (§ 668.16(t))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: The Department proposes to add a new § 668.16(t). The Department considers an institution to be administratively capable if it offers GE programs subject to part 668 subpart S and at least half of its total title IV, HEA funds in the most recent award year are not from programs that are failing under part 668 subpart S, and at least half of its full-time equivalent title IV, HEA receiving students are not enrolled in programs that are failing under part 668 subpart S.

Reasons: The proposed gainful employment regulations in subpart S of part 668 would operate on a programmatic basis. This would allow the Department to identify situations where specific offerings at an institution may not provide sufficient financial value. However, when a majority of an institution's title IV, HEA funds and enrollment is in failing GE programs, those results would indicate a more widespread and systemic set of concerns that is not limited to individual programs. This would allow the Department to take additional steps to increase its oversight of these institutions, such as placing them on a provisional PPA.

Accordingly, the Department proposes that an institution that obtains most of its revenue from, or enrolls most of its Title IV-eligible students in, failing GE programs would lack administrative capability.

Administrative Capability—Misrepresentation (§ 668.16(u))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.16(u) to prohibit an institution from engaging in misrepresentation, as defined in 34 CFR part 668, subpart F, or aggressive and deceptive recruitment tactics or conduct, as defined in 34 CFR part 668, subpart R.

Reasons: The Department proposes administrative capability requirements about an institutions' misrepresentation under § 668.16(u) because of the detrimental effects such activity could have on students and the risks it poses to taxpayers. Current § 668.71 defines ''misrepresentation'' as any false, erroneous or misleading statement an eligible institution or one of its representatives makes directly or indirectly to a student. The definition of ''aggressive and deceptive recruitment tactics or conduct'' appears in our final rule published in the **Federal Register** on November 1, 2022.[132] Activities that we consider misrepresentation and aggressive recruitment increase risk to students and taxpayers, specifically with respect to borrower defense claims. The student is often left with a worthless degree, certificate, or credential as a result of institutional misrepresentation or aggressive recruitment into a program with questionable earnings and employment outcomes, and student's debt may be discharged under an approved borrower defense claim. The Department proposes to incorporate these as practices prohibited in the standards of administrative capability. Doing so ensures there is greater alignment between our administrative capability requirements and the standards that relate to other oversight and enforcement work.

Certification Procedures (§§ 668.2, 668.13, 668.14)

General Definitions (§ 668.2)

Statute: Section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. This authority includes the power to promulgate regulations relating to programs that we administer, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, whether to pursue eligible non-GE programs or GE programs. Moreover, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations that the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.

Current Regulations: None.

Proposed Regulations: We propose to adopt OMB's definition of a ''metropolitan statistical area'' in our regulations. Under the proposed definition, a ''metropolitan statistical area'' would mean a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.[133]

Reasons: This added definition is necessary given other changes in this section that set requirements for clock

[132] 87 FR 65904.

[133] *www.census.gov/programs-surveys/metro-micro/about.html.*

hours, credit hours, or the equivalent based upon where the institution is physically located or where the students it serves work. To that end, we would define ''metropolitan statistical area'' as part of the proposed requirements in § 668.14(b)(26)(ii)(B) to determine the minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation in a State in which the institution is not located. Our proposed changes would reference the institution's metropolitan statistical area in one of three scenarios in which the minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student could be determined by a State in which the institution is not located. We choose to include a State other than the institution's home State when determining a program's licensure and accreditation requirements because we understand that some students may not currently reside in the State in which the institution is located or have plans to reside in a different State from which the institution is located. Institutions may also be located near borders with other States. Thus, we want institutions to have the flexibility to determine the State in which the student would need to meet licensure and accreditation requirements. Specifically, for a program offered within the same metropolitan statistical area as the institution's home State, we would look for a majority of students that upon enrollment in the program during the most recently completed award year stated in writing which State they intended to work in within the metropolitan statistical area. Using the New York metropolitan area as an example, if a student attended school in Connecticut but had plans to work in New York after graduation, we would permit the institution to use New York's minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation to meet our licensure and accreditation requirements.

Period of Participation (§ 668.13(b)(3))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(g)(1) outlines timing limitations on the certification renewal process.

Current Regulations: Current § 668.13(b)(3) specifies the period of participation for which a postsecondary institution may participate in the title IV, HEA programs. If the Secretary does not grant or deny certification within 12 months of the expiration of its current period of participation, the institution is automatically granted renewal of certification, which may be provisional.

Proposed Regulations: We propose to eliminate current § 668.13(b)(3) that automatically grants an institution renewal of certification if the Secretary does not grant or deny certification within 12 months of the expiration of its current period of participation.

Reasons: As part of the 2020 final rule for Distance Education and Innovation,[134] the Department believed automatically granting an institution renewal of certification after 12 months would encourage prompt processing of applications, timely feedback to institutions, proper oversight of institutions, and speedier remedies for deficiencies identified. However, since then, the Department has realized that giving ourselves a time constraint negatively impacts our most important goal, program integrity. In fact, a premature decision to grant or deny a certification application when unresolved issues remain under review creates substantial negative consequences for students, institutions, taxpayers, and the Department.

Institutions that remain on month-to-month approval for an extended period of time are typically undergoing extensive investigation. Month-to-month participation beyond the current maximum period of one year would allow the Department additional time to investigate issues more fully and would maintain institutions in a month-to-month status while the Department completes its review. If we are forced to issue a decision under a limited timetable, we are likely to put the institution on a provisional certification for one year, which adds burden for both institutions and the Department. For example, if we place the institution on one-year provisional certification, the institution would need to start the recertification process all over again after nine months. The result is more overall work than simply keeping the institution in a month-to-month status while any issues related to the institution are reviewed by the Department.

Eliminating this provision would allow the Department to take the necessary time to investigate institutions thoroughly prior to deciding whether to grant or deny a certification application and ensure institutions are approved only when they comply with Federal rules. Ultimately, the Department, institutions, students, and taxpayers benefit from the Department having the necessary time to thoroughly review each application and make an informed decision that protects students and taxpayers from high-risk institutions.

[134] 85 FR 54742.

Provisional Certification (§ 668.13(c))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV HEA programs. Section 498(h) of the HEA discusses provisional certification of institutional eligibility to participate in the title IV, HEA programs. This provisional certification can occur for up to one year if the institution is seeking initial certification; and for up to three years if the institution's administrative capability and financial responsibility are being determined for the first time, there is a change of ownership, or the Department determines that an institution seeking to renew its certification is in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities.

Current Regulations: Current § 668.13(c)(1)(i)(C) includes a list of circumstances in which the Department may provisionally certify a participating institution. These include circumstances where the Department is certifying a participating institution that—

- Is applying for a certification and meets the standards for an institution to participate in any title IV, HEA program;
- The Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 and subpart L or the standards of administrative capability under § 668.16; and
- Has had its participation limited or suspended by the Department under subpart G, or voluntarily enters into provisional certification.

The Department may also provisionally certify an institution under current § 668.13(c)(1)(i)(D) if the institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program. Under current § 668.13(c)(1)(i)(F) an institution may be provisionally certified if the institution is a participating institution that has been provisionally recertified under the automatic recertification requirement in current § 668.13(b)(3). Current § 668.13(c)(1)(ii) provides that a proprietary institution's certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under § 668.14(b)(16). Current § 668.13(c)(2) specifies the maximum period for which an institution, provisionally certified by the Department, may participate in a title IV, HEA program, except as provided in 668.13(c)(3) and (4). Under this paragraph a provisionally certified institution's period of participation expires:

- Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i)(A) of this section.
- Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(i)(B), (C), and (D) or paragraph (c)(1)(ii) of this section.
- If the Secretary provisionally certified the institution under paragraph (c)(1)(i)(E) of this section, no later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

Proposed Regulations: Under § 668.13(c)(1), the Department proposes to amend existing conditions and add new conditions for when an institution may be provisionally certified. Under § 668.13(c)(2), the Department proposes to add a new time frame for when an institution's provisionally certified status would expire. The Department also proposes to make a few technical corrections and replace outdated cross references with descriptions on what is being referenced in § 668.13(c)(1) and § 668.13(c)(2).

In § 668.13(c)(1)(i)(C), we propose to revise the existing language to specify the Department's provisional certification of an institution that is not only a participating institution, but an institution applying for a renewal certification that fits one of the three circumstances previously included in current § 668.13(c)(1)(i)(C). We also propose to replace current § 668.13(c)(1)(i)(F) with a new condition in which the Secretary may provisionally certify an institution if the Secretary has determined that the institution is at risk of closure. In § 668.13(c)(1)(i)(G), we propose to add another new condition in which the Secretary may provisionally certify an institution if it is permitted to use the provisional certification alternative under subpart L. We propose to revise and redesignate current § 668.13(c)(1)(ii) as proposed § 668.13(c)(1)(iii). In redesignated § 668.13(c)(1)(iii), we propose to amend ''Title IV, HEA program funds'' as ''Federal educational assistance funds'' to conform with the 2022 final rule for 90/10.[135] We propose to add a new § 668.13(c)(1)(ii) that provides that an institution's certification would become provisional upon notification from the Secretary, if the institution either triggers one of the financial responsibility events under § 668.171(c) or (d) and, as a result, the Secretary requires the institution to post financial protection; or any owner or interest holder of the institution with control over that institution, as defined in § 600.31, also owns another institution with fines or liabilities owed to the Department and is not making payments in accordance with an agreement to repay that liability.

The Department also proposes to add subpart L as an exception to § 668.13(c)(2). In addition, we propose to replace the cross reference of ''paragraph (c)(1)(i)(A)'' in § 668.13(c)(2)(i) with ''for its initial certification.'' We also propose to redesignate current § 668.13(c)(2)(ii) as § 668.13(c)(2)(iii). We propose a new § 668.13(c)(2)(ii) to state that a provisionally certified institution's period of participation would expire no later than the end of the second complete award year following the date on which the Secretary provisionally certified an institution for reasons related to substantial liabilities owed or potentially owed to the Department for borrower defense to repayment or false certification discharges, or for other consumer protection concerns as identified by the Secretary. We consider consumer protection concerns as instances where an institution may create a high-risk situation for students, such as by misleading students about educational programs, institutions falsely certifying students' eligibility to receive a loan, or an institution being at risk of closure. Note that institutions would not automatically lose title IV eligibility if they are found to have consumer protection concerns.

Reasons: In § 668.13(c)(1)(i)(C), the Department proposes to clarify, consistent with its current practice, that the Secretary may provisionally certify an institution that is not meeting the requirements for financial responsibility and administrative capability or is subject to an action under subpart G. The reference to subpart G as currently written does not clearly separate subpart G from the requirements for financial responsibility and administrative capability, and so our proposed changes would clarify that subpart G is not a required element for provisional certification, but rather a separate and independent basis for provisional certification. In addition, we propose to remove the language in existing § 668.13(c)(1)(i)(F) because it is related to the automatic certification requirement in § 668.13(b)(3) the Department is proposing to eliminate. In its place, we propose to add a new condition to § 668.13(c)(1)(i)(F) that would allow the Secretary the option to place an institution on provisional status if the Department has determined the institution is at risk of closure. This proposed condition aligns with additional conditions the Department proposes to add to provisionally certified schools at risk of closure in § 668.14 and would make it easier to apply conditions, such as prohibiting transcript withholding, if the Secretary is concerned about the institution's viability. Institutional closures create significant disruption for students and the Department, which often leave students no choice but to restart their education. In addition, students often lose credits when transferring to another institution because teach-out plans were not in place, resulting in significant liabilities tied to closed school discharges. In fact, a GAO report stated that students who transferred lost an estimated 43 percent of their credits. However, that differed greatly across types of colleges.[136] Students transferring among for-profit colleges lost an average of 83 percent of their credits, compared to a loss of 50 percent and 37 percent for transfers among non-profit and public colleges, respectively. Thus, it is imperative for the Department to address risks associated with institutions that are at risk of closure before they close, including by encouraging more orderly closures, increasing the possibility of financial protection for both the Department and students, and support students during this difficult transition. As stated during negotiations, the Department would notify the institution when it has determined that the school is at risk for closure and provisionally certify it. In addition, we propose to add a new condition in § 668.13 (c)(1)(i)(G) in which the Secretary may provisionally certify an institution if it is permitted to

[135] 87 FR 65426.

[136] GAO Report, GAO–17–574, ''Students Need More Information to Help Reduce Challenges in Transferring College Credits,'' Aug. 14, 2017. *www.gao.gov/products/gao-17-574*.

use the provisionally certified alternative under subpart L. The provisional certification alternative in subpart L is not dependent on an initial application, a change of ownership, reinstatement or a recertification, but permits an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years.

The Department proposes new language in § 668.13(c)(1)(ii) designed to better protect students and taxpayers by placing certain high-risk institutions under provisional status. It also aligns the certification procedures regulations with other changes being made to financial responsibility in other parts of this NPRM. Institutions are currently placed on provisional status for a variety of reasons, including changes in ownership, late submission of compliance audits, and State or accreditor actions. The Department believes it is appropriate to additionally place an institution under provisional status when an institution lacks financial responsibility or any owner or interest holder of the institution with control over that institution owns or owned another institution with fines or liabilities owed to the Department. Placing an institution under provisional certification for these reasons provides the Department the ability to closely monitor that institution and it allows us to impose conditions in a PPA to address our concerns (*e.g.,* by limiting the growth in an institution if it is subject to an adverse condition by a creditor that indicates the institution may be at risk of closure).

The Department proposes to add subpart L in § 668.13(c)(2) to provide a provisional certification alternative that is not currently reflected in § 668.13(c). Unlike § 668.13(c), the alternative is not dependent on an initial application, change of ownership, reinstatement, or recertification.

Proposed § 668.13(c)(2)(ii), would require institutions exhibiting consumer protection concerns to recertify within two years. The Department believes this proposed language would ensure more frequent oversight of institutions and would allow the Department to reassess any problems regularly. While there are many consumer protection concerns the Department would reassess institutions for, we are particularly interested in reassessing changes of ownership with new owners who have never operated a school, as well as where there has been an approved conversion from proprietary to nonprofit status, for any continued involvement after the change in ownership with prior owners that show signs of possible prohibited insider advantage. As stated in a December 2020 GAO report [137] on for-profit college conversions, it is imperative for the Department to develop and implement procedures to monitor newly converted colleges. Proposed § 668.13(c)(2)(ii) would particularly help with changes in ownership as it would require reassessment of provisionally certified institutions that have significant consumer protection concerns by the end of their second year of receiving certification.

The December 2020 GAO report [138] identified 59 changes of ownership from a for-profit entity to a nonprofit entity, which involved 20 separate tax-exempt organizations, between January 2011 and August 2020. Notably, one chain included 13 separate institutions that closed prior to the Department deciding whether to approve the requested conversion to nonprofit status. Three-fourths of the institutions were sold to a formerly for-profit entity (or nonprofit affiliate of a for-profit entity) that had no previous experience operating an institution of higher education, increasing the risk that an institution would not be well-managed, or might be on shaky financial footing that depends upon unrealistic assumptions about enrollment growth or profitability, or that is unable to deliver an educational experience to students that has been promised. This is the type of population of new owners we would reassess more frequently. Without prior experience, we are not confident these owners would know how to properly administer the title IV, HEA programs. For instance, one of the most high-profile college failures in the last several years involved an owner that had no prior experience running a postsecondary institution. On the other hand, one-third of the institutions had what GAO termed ''insider involvement'' in the purchasing of the nonprofit organization (*i.e.,* someone from the former for-profit owner was involved in the nonprofit purchaser, as well), suggesting greater risk of impermissible benefits to those insiders. We would reassess prior owners that show signs of possible prohibited insider advantage because ''insider involvement'' is typically done for an owner's own financial benefit and not necessarily as a benefit for students.

[137] GAO Report, GAO–21–89, ''Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions'', Dec. 31, 2020. *www.gao.gov/products/gao-21-89.*

[138] Ibid.

Directed Question

We seek feedback from commenters about whether to maintain the proposed two-year limit or extend recertification to no more than three years for provisionally certified schools with major consumer protection issues. Both approaches would operate as maximum lengths, allowing the Department to certify individual institutions for shorter periods of time. We want to further consider whether two years is long enough to evaluate how well the institution has addressed consumer protection issues. If the Department makes a recertification decision before it has enough information, it could mean not taking a fully informed action when the institution reaches its recertification or taking a premature action to deny recertification to an institution that is making a real effort to improve. Since continuing to let an institution operate for longer could result in significant increases in the total amount of potential liabilities, we are especially interested to receive feedback from commenters.

Supplementary Performance Measures (§ 668.13(e))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department.

Current Regulations: Current § 668.13 stipulates certain procedures governing the Department's determination to certify an institution's eligibility to participate in the title IV, HEA programs or condition the institution's participation.

Proposed Regulations: We propose to add paragraph (e) to establish supplementary performance measures the Department may consider in determining whether to certify or condition the participation of the institution. Under proposed § 668.13(e), when making certification decisions, we could assess and consider (1) the institution's withdrawal rate, defined as the percentage of students in the enrollment cohort who withdrew from the institution within 100 percent or 150 percent of the published length of the program; (2) D/E rates of programs offered by the institution, if applicable; (3) Earnings premium measures of programs offered by the institution, if applicable; (4) the amounts the institution spent on instruction/

instructional activities, academic support, and support services, and the amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures, as provided through a disclosure in the institution's required audited financial statements required under § 668.23; and (5) the licensure pass rate of programs offered by the institution that are designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, if the institution is required by an accrediting agency or State to report licensure passage rates.

Reasons: Metrics such as withdrawal rates, D/E rates, earnings premium measures, and spending on instruction, student support, and recruitment, can provide the Department useful information regarding the value of an institution's educational offerings and the outcomes students experience. To safeguard the interests of students and taxpayers, we believe it is important that the Department consider this information when making decisions about whether to certify or condition an institution's title IV, HEA participation. Codifying these supplemental performance measures would also provide additional clarity and transparency to institutions regarding the types of information the Department will likely consider when making certification decisions.

Signing a Program Participation Agreement (§ 668.14(a))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(e) specifies that the Secretary may, to the extent necessary to protect the financial interest of the United States, require financial guarantees from an institution participating or seeking to participate in a title IV, HEA program, or from one or more individuals who exercise substantial control over the institution.

Current Regulations: Current § 668.14(a) states that an institution may participate in any title IV, HEA program, other than the LEAP and NEISP programs, only if the institution enters a written PPA with the Secretary. A PPA conditions the initial and continued participation of an eligible institution in any title IV, HEA program upon compliance with the conditions specified in the PPA.

Proposed Regulations: The Department proposes to add a new paragraph in current § 668.14 that would specify who must sign an institution's PPA. The Department proposes new § 668.14(a)(3), which would state that an institution's PPA must be signed by an authorized representative of the institution. Proprietary or private nonprofit institutions would also be required to have an authorized representative of an entity with direct or indirect ownership sign the PPA if that entity has the power to exercise control over the institution. The Secretary would consider the following as examples of circumstances in which an entity has such power—

• If the entity has at least 50 percent control over the institution through direct or indirect ownership, by voting rights, or by its right to appoint board members to the institution or any other entity, whether by itself or in combination with other entities or natural persons with which it is affiliated or related, or pursuant to a proxy or voting or similar agreement.

• If the entity has the power to block significant actions.

• If the entity is the 100 percent direct or indirect interest holder of the institution.

• If the entity provides or will provide the financial statements to meet any of the requirements of § 600.20(g) or (h), or § 668 subpart L.

Reasons: Electronic Announcement (EA) GENERAL 22–16 updated PPA signature requirements for entities exercising substantial control over non-public institutions of higher education.[139] To protect taxpayers and students, the Department believes that entities that exert control over institutions should assume responsibility for institutional liabilities. Requiring owner entities to sign the PPA and assume such liability provides protection in the event that an institution fails to pay its liabilities, which has been a recurring problem when institutions close, particularly those that close precipitously. While EA GENERAL 22–16 used a rebuttable presumption, here we propose language in § 668.14(a)(3) that would not only require a representative of the institution to sign a PPA, but also an authorized representative of an entity with direct or indirect ownership or control of non-public institutions. The difference is we would then be able to require these signatures in all situations that meet the regulatory threshold, rather than on a case-by-case basis using the rebuttable presumption.

When an institution closes, the Department often struggles to access funds from the closing institution to pay its liabilities. This is particularly troublesome knowing that some entities that own the institution continue to operate or have the resources to repay the liabilities. In the event of closure, this protection would allow the Department to ensure owner entities with at least a 50 percent interest in the institution are liable for taxpayer losses that may be incurred by the institution. Since owning more than 50 percent is considered a simple majority, we believe this is a suitable percent to use as the threshold. As discussed in our Final Rule for closed school discharges,[140] section 438 of the HEA states that the Secretary must subsequently pursue any claim available to such borrower (who received a closed school discharge) against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H. Consequently, we would pursue affiliates and principals, along with the institution, to settle the loan obligation associated with a closed school discharge. Specifically, we would consider owner entities with at least a 50 percent interest in the institution to be among those considered to be affiliates or principals.

Entering Into a Program Participation Agreement (§ 668.14(b)(5), (17), (18), (26))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(c) outlines the criteria used to determine whether an institution demonstrates financial responsibility.

Current Regulations: Current § 668.14(b)(5) states that by entering into a PPA, an institution agrees that it will comply with the provisions of § 668.15 relating to factors of financial responsibility. Current § 668.14(b)(17)

[139] Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education, *fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education.*

[140] 87 FR 65904.

states that the Secretary, guaranty agencies and lenders as defined in § 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State agencies recognized under § 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud and abuse. Current § 668.14(b)(18)(ii) states that an institution will not knowingly contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or an institution or third-party servicer that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. Current § 668.14(b)(18)(iii)(B) states that an institution will not knowingly contract with or employ any individual, agency, or organization that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. Current § 668.14(b)(26)(i) states that if an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. In current § 668.14(b)(26)(i)(A) and (B), the Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed the greater of one hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, or the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student as established in a State adjacent to the State in which the institution is located.

Proposed Regulations: The Department proposes to add three new paragraphs in § 668.14(b), amend one paragraph due to other changes made in the financial responsibility regulations, and amend the program length requirements of GE programs. We also propose to add language to extend to all federal agencies the authority to share with each other any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law.

The Department proposes to amend current § 668.14(b)(5) to refer to all factors of financial responsibility in an expanded subpart L, instead of the current mention of § 668.15, the text of which is being deleted with the section reserved. In § 668.14(b)(17), the Department proposes to broaden the reference of ''the Secretary of Veterans Affairs'' to ''Federal agencies'' and add State attorneys general to the list of entities authorized to share information with each other. Additionally, we propose to add ''or other violations of law are included within the fraud and abuse purposes of this information-sharing provision. In § 668.14(b)(18), the Department proposes to restructure the language to clarify the requirements for contracting and employing an individual, agency, or organization. In § 668.14(b)(18)(ii)(C), the Department proposes for an institution to not knowingly contract with any institution, third-party servicer, individual, agency, or organization that has, or whose owners, officers or employees have, been judicially determined to have committed fraud or had participation in the title IV programs terminated, certification revoked, or application for certification or recertification for participation in the title IV programs denied. This would include any individuals who exercised substantial control by ownership interest or management over the institution, third-party servicer, agency, or organization that has had its participation in title IV programs terminated or revoked, or its certification or recertification denied. We also propose to add to the list of reasons in which an institution or third-party servicer may be terminated from participating in the title IV, HEA programs. Specifically, we propose to add that an institution may not have owners, officers, or employees of the institution or its third-party servicer that have exercised substantial control over an institution, or a direct or indirect parent entity of an institution that owes a liability for a violation of a title IV, HEA program, requirement and is not making payments in accordance with an agreement to repay that liability. The Department also proposes for an institution to not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, ten-percent-or-higher equity owners, directors, officers, principals, executives, or contractors at an institution in any year in which that institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.

The Department proposes to make several revisions in § 668.14(b)(26) regarding an educational program offered by an institution that is required to prepare a student for gainful employment in a recognized occupation. Namely, in new § 668.14(b)(26)(ii), we propose to limit the number of hours in gainful employment programs to the greater of the required minimum number of clock or credit hours as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency or the institution's accrediting agency.

If certain criteria are met, then a program may instead be limited to another State's required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student. Another State's requirements could only be used if the institution can demonstrate that:

- A majority of students resided in that other State while enrolled in the program during the most recently completed award year;
- A majority of students who completed the program in the most recently completed award year were employed in that State; or
- The other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State.

For any programmatic and licensure requirements that come from a State other than the home State, the institution must provide documentation of the State meeting one of the three qualifying requirements listed above and the documentation provided must be substantiated by the certified public accountant who prepares the institution's compliance audit report as required under § 668.23.

Reasons: Current § 668.14(b)(5) refers to a legacy section of the General Provisions (§ 668.15) that would be reserved under these proposed regulations. Accordingly, in signing a

PPA, an institution would now agree to comply with the provisions of subpart L of part 668 (instead of § 668.15 as is currently required), where all requirements related to financial responsibility would now be located.

The Department's proposed changes to § 668.14(b)(17) broadening the list of entities authorized to share information related to an institution's eligibility for or participation in the title IV, HEA programs to include all Federal agencies, as well as State attorneys general, would create an improved accountability structure. Many Federal agencies provide student assistance and are in possession of information potentially relevant to the Department's oversight of institutions' participation in the title IV, HEA programs. This is especially the case where such information indicates that an institution is in a tenuous financial position or in danger of closing. Likewise, the addition of State attorneys general to the list of entities included in information-sharing related to title IV, HEA participation would codify in regulation access to one of the best outside sources of knowledge available to the Department about activities that may be detrimental to program integrity or the interests of students. States play an important role in oversight of institutions, and we believe the actions of attorneys general, especially where fraud or abuse are suspected, and where an institution is in imminent danger of closing, are of primary interest to the Department in meeting its responsibilities to oversee the title IV, HEA programs and protect the interests of students. Evidence generated from State attorneys general has enabled the Department to conduct a more thorough and rigorous review of borrower defense claims against institutions such as Corinthian Colleges, Inc., ITT Technical Institute (ITT), the Court Reporting Institute, Minnesota School of Business and Globe University, and Westwood College.[141] In several of these instances, State attorneys general submitted internal company documents, presentations, emails, and memos that assisted in establishing that these institutions engaged in misrepresentations. The financial implications on borrowers of approved borrower defense claims are significant. For example, the approval of 18,000 borrower defense claims for individuals who attended ITT resulted in borrowers receiving 100 percent of their loans discharged, which amounted to approximately $500 million in relief.[142] Thus, State attorneys general have been an invaluable source of evidence for many of the Department's approvals of borrower defense claims and we anticipate they will continue to be an important source of evidence. Not only would adding State attorneys general to the list of entities included in information-sharing related to title IV, HEA participation formalize an existing relationship that has greatly facilitated the Department's oversight activities and granting of relief to borrowers, it would make possible an exchange of information (applicable to all entities listed in § 668.14(b)(17)) that is mutually beneficial to the oversight activities of all involved. Lastly, the addition in § 668.14(b)(17) of fraud, abuse, and other violations of law in the type of information that may be shared among listed entities recognizes the need for the Department, specifically the Office of the Inspector General, to be informed whenever such activity is suspected and would establish in regulation a protocol for that to occur.

In § 668.14(b)(18), the Department proposes to separate the employee and contractor requirements between two romanettes because although they have similar requirements, it reads clearer when splitting them into two paragraphs and eliminates the duplication that previously occurred when additional criteria was added. Current regulations found in § 668.14(b)(18)(ii) prohibit institutions from contracting with other institutions or third-party servicers that have been terminated from participation in title IV, HEA programs for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that have been administratively or judicially determined to have committed fraud or any other material violation of the law involving Federal, State, or local government funds. The regulations are silent on the principals of such entities except to the extent that current § 668.14(b)(18)(iii) prohibits an institution from contracting with or employing any individual, agency, or organization that has been, or whose officers or employees have been convicted of or pled *nolo contendere* to a crime involving the use or expenditure of Federal, State, or local government funds or has been administratively determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. In conducting oversight activities, the Department has become aware of individuals involved with the administration of title IV, HEA programs who, though not convicted of a crime or determined to have committed fraud involving public funds, have nevertheless been principally involved in the operation of institutions that have unpaid liabilities assessed against them. These individuals often contract with another institution or third-party servicer who have been terminated from participation in title IV, HEA, or whose owners, officers, or employees had substantial control over an institution that still owes a liability to the Department for a title IV, HEA violation that is not being repaid. In addition, we also propose language that would ensure that institutions may not employ or contract with owners or officers from an institution that incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA volume. In both cases, the Department is concerned that allowing such individuals to continue to work with title IV, HEA funds presents an ongoing risk to the integrity of the programs and could result in additional future liabilities.

The proposed changes in § 668.14(b)(26) address concerns the Department has about institutions offering programs tied to licensure that are longer than required by their State, which results in those students using up more of their lifetime eligibility for Pell Grants or other Federal financial aid, potentially making it harder for them to pursue later training. Longer programs associated with State minimum licensure requirements are more likely to result in higher debt and a longer period of enrollment without requisite career benefits. To that end, we propose changes to § 668.14(b)(26) that would limit the occasions when an institution can offer a GE program that requires students to complete more hours than are required by the institution's State for licensure or certification purposes. Such a change ensures that students will still obtain the necessary hours that the State requires so that they will be able to work in a given profession but protects against accumulation of student debt and usage of a student's lifetime limits for title IV, HEA financial assistance that go beyond that required point. The current regulations, which permit an

[141] U.S. Department of Education press releases: *www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students*; *www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions*.

[142] U.S. Department of Education press release: *www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=*.

institution to offer a program that includes the greater of 150 percent of the hours required by the State in which the institution is located, or the minimum hours required by an adjacent State, have led to situations where institutions have offered more hours than were necessary for a student to become licensed in the State where the institution was located, even when the adjacent State that had a requirement for a greater number of hours was many miles away and students were unlikely to seek to become employed there.

Our proposed changes in § 668.14(b)(26)(ii)(A) would generally allow for programs to be at least as long as required by the State in which the institution is located but allow for exceptions under § 668.14(b)(26)(ii)(B). Namely, the institution would be permitted to offer a longer program that fulfills another State's greater minimum requirements if an institution can demonstrate that a majority of students resided in that State while enrolled in the program during the most recently completed award year, were employed in such a State during the most recently completed award year after completing the program, or affirmed in writing upon enrollment that they intended to work in such a State, as long as the State was in the same metropolitan statistical area as the institution. In other words, if one of the exception criteria is met, the institution could increase the minimum number of hours in the program to align with the required number of hours in the State where students reside, were employed, or intend to be employed. We included ''credit hours, or the equivalent'' to codify our current policy that a program with credit hours must perform a conversion to ensure that the converted hours in the program do not exceed the minimum requirements for the State. Furthermore, to improve the integrity and accuracy of the information supporting an exception, our proposed changes in § 668.14(b)(26)(ii)(B) would add a required auditor attestation of the institution's documentation that a majority of the students in its program have a relationship with another State that meets one of the aforementioned exemption criteria. In the three paragraphs under proposed § 668.14(b)(26)(ii)(B), we also added timeframes that reflect the most current information that an institution could reasonably be expected to have in its possession.

Notably, these changes leave untouched many existing provisions of the current regulatory requirement in § 668.14(b)(26). This includes that the language only applies to programs that are required to prepare a student for gainful employment in a recognized occupation, that the institution establishes the need for the training, and the concept that there be a reasonable relationship between the length of the program and the requirements for working in the occupation for which the student is being prepared.

Entering Into a Program Participation Agreement (§ 668.14(b)(32–34))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(c) outlines the criteria used to determine whether an institution demonstrates financial responsibility.

Current Regulations: None.

Proposed Regulations: The Department proposes to add three additional new paragraphs to § 668.14(b). We propose § 668.14(b)(32) to require that in each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with § 600.9(c)(2), the institution must determine that each program eligible for title IV, HEA program funds—

• Is programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency;

• Satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

• Complies with all State consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions.

The Department also proposes for § 668.14(b)(33) to state that an institution will not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution's administration of the title IV, HEA programs, any fraud or misconduct by the institution or its personnel, or returns of funds under the Return of Title IV Funds process under § 668.22 unless the balance owed was the result of fraud on the part of the student. We propose for § 668.14(b)(34) to state that an institution will not maintain policies and procedures to encourage, or condition institutional aid, including income-share agreements, tuition payment plans, or other student benefits in a manner that induces, a student to limit the amount of Federal student aid, including Federal loan funds, that the student receives. The institution may provide a scholarship, however, on the condition that a student forego borrowing if the amount of the scholarship -provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.

Reasons: Proposed § 668.14(b)(32) would require that an institution offering a program that leads to an occupation meet all applicable requirements, particularly if a program needs to meet programmatic accreditation or has licensure requirements in order for program graduates to qualify to work in that occupation. We are aware of institutions enrolling students in programs that do not meet such requirements. Students in these programs often find themselves struggling to find employment and owing student loans on credentials that do not qualify them to work in the occupations for which they were trained. Thus, this additional requirement would further protect students so that they do not waste their time and money on programs that will not qualify them for licensure or certification in an occupation in that State. The proposed regulations would also further strengthen protection of the financial investment that taxpayers are making in education so that Federal funds are not expended on programs that will not qualify a student for licensure or certification.

To operate legally in a State, an institution is already required to comply with that State's authorization requirements, including any State consumer protection requirements. For an institution covered by a State authorization reciprocity agreement to be considered legally offering postsecondary distance education in a State, it is subject to any limitations in that agreement and to any State requirements not relating to authorization of distance education.

The additional requirement of § 668.14(b)(32)(iii) specifies that an institution would have to make a determination that each of its programs eligible for title IV, HEA program funds comply with all of a State's consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions. In crafting this language, the Department is balancing the goals of ensuring that institutions have a reasonable path to offer distance education to students who do not reside within their borders while ensuring that States have the ability to protect their students if an institution located in another State tries to take advantage of students or is at risk of closure. We are concerned about past situations in which States have raised concerns about institutions that are physically located outside of its borders and taking advantage of students while the State is limited in its ability to apply its own consumer protection laws in these areas to protect its residents. That can hamper State efforts to try and step in and help students if there is evidence that an out-of-State school is taking advantage of students. It can also minimize the ability of students to access tuition recovery funds to repay any tuition paid out of pocket. Our proposed approach intentionally only applies to laws in three areas: closure, recruitment, and misrepresentation. These are the three areas where the Department has historically incurred the greatest expenses from student loan discharges related to either closed schools or borrower defense. This includes instances where closed institutions left students with no path to complete a credential, cases where students were pressured into enrollment, and cases where institutions misled students about key elements of the education. At the same time, this language would not apply to other types of laws that may represent significant variation across States in ways that would make it harder for an institution to operate through a reciprocity agreement. This includes tuition refund policies, rules on site visits, and State-specific outcomes metrics.

While crafting this proposed requirement we recognize that there is a great diversity in the types of different consumer protection laws and the benefits they can provide students. Therefore, we seek feedback on the best way to construct this requirement so that students are protected, financially and otherwise, without creating unnecessary burden on institutions.

Furthermore, we propose a PPA requirement in § 668.14(b)(33) that prohibits institutions from withholding transcripts as a means of forcing a student to pay a balance on their account if the balance was created because the institution made an administrative error with respect to the student's title IV, HEA funds, if the balance otherwise results from the institution's fraud or misconduct, or if the balance results solely from returns of title IV, HEA funds under the Return of Title IV Funds requirements under § 668.22. We have seen instances where institutions have improperly calculated a student's aid and, after correcting the error and returning title IV, HEA funds back to the Department, the institutions bill the student for those amounts. Additionally, following the conclusion of negotiated rulemaking, the Department performed a comprehensive analysis of the impact of the CARES Act waiver of returns of funds under Return of Title IV Funds requirements on a student's likelihood to immediately re-enroll following the withdrawal. The results of this analysis suggest that students who qualified for the CARES Act waiver of returns of funds under the Return of Title IV process were more likely to re-enroll in the following semester at either their current or a new postsecondary institution. Given this analysis, the stated concerns of negotiators regarding the practice of transcript withholding, and several recent policy reports [143] [144] regarding the negative consequences for students related to transcript withholding, we also believe that transcript withholding and debt collection procedures are inappropriate in cases where account balances or other debts to the institution result solely from the Return of Title IV Funds process. Institutional tuition refund policies often stop providing refunds to students sooner than the point at which institutions no longer have to return title IV, HEA aid from a student who withdrew during a term. The result is that many students who withdraw after tuition refund periods are over are frequently left with significant balances owed to the institution simply because they withdrew from the institution and were subject to the mandated Return of Title IV funds process. An institution taking further negative action against a student in those circumstances could exacerbate a situation that was already difficult for the student. In all these circumstances, holding transcripts or taking other negative actions against the student make it more difficult for the student to re-enroll or transfer credit to another institution. Thus, in these circumstances we believe that withholding transcripts for additional charges is counterproductive and inappropriate. The proposed regulations would benefit students by not allowing institutions to withhold transcripts from them when it was the institution's own actions (whether unintentional or through fraud or other malfeasance) or the Return of Title IV Funds process that resulted in an unanticipated charge. Furthermore, as mentioned during negotiations, the Department oversees the administration of title IV, HEA funds on students' behalf; however, separate from title IV, HEA, the student has an agreement with the institution. Title IV Funds calculations and institutional errors, misconduct, and fraud related to the awarding or disbursement of title IV, HEA funds. Note that if an institution is provisionally certified, we may apply other conditions that are necessary or appropriate to the institution, including, but not limited to releasing holds on student transcripts if the institution is at risk of closure, is teaching out or closing, or is not financially responsible or administratively capable.

We propose a PPA condition in § 668.14(b)(34) that would address a problem where institutions may prevent students from taking out Federal financial aid that students are entitled to through various inducements, incentives, or unnecessarily burdensome barriers. The last category includes setting up hurdles such as requiring the completion of unnecessary or duplicative forms. We believe it is critical that students be able to access all the Federal aid to which they are entitled, especially to afford necessities like food and housing. We would, however, make an exception for cases where the institution offers institutional scholarships of the same or greater amounts as the Direct Loan funds for which the student would otherwise be eligible to borrow. In such situations the student would still have access to, and be able to receive, the full amount of funding for which the school determined was needed. We believe this exception would promote greater affordability and potentially leave students less indebted at graduation, while still ensuring that the students

[143] Ithaka S+R. (2021). *Stranded Credits: A Matter of Equity. www.sr.ithaka.org/publications/stranded-credits-a-matter-of-equity/.*

[144] Consumer Financial Protection Bureau (Fall 2022). *Supervisory Highlights Student Loan Servicing Special Edition*, 8–9. *www.files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.*

have funds to pay for educational expenses.

Note that this proposed provision that would prevent institutions from establishing obstacles or inducements against borrowing is distinct from and would not impact an institution's ability to refuse to originate a student's Direct Loan under § 685.301(a)(8). Under those regulations, an institution may refuse to originate or reduce the amount of a student's Direct Loan if the reason for that action is documented and provided to the borrower in writing, and if the institution makes such determinations on a case-by-case basis, maintains documentation of each decision, and does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income. The proposed restriction is on institutional policies or practices designed to limit borrowing generally, not specific refusals for individual students that are documented and made solely on a case-by-case basis.

Conditions That May Apply to Provisionally Certified Institutions (§ 668.14(e)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(c) outlines the criteria used to determine whether an institution has met the standards of financial responsibility. HEA section 498(d) authorizes the Secretary to establish reasonable procedures and requirements to ensure that institutions are administratively capable. HEA section 498(h) discusses provisional certification of institutional eligibility to participate in the title IV, HEA programs. HEA section 498(k) outlines the treatment of teach-outs.

Current Regulations: Current § 668.14(e) states that a PPA becomes effective on the date that the Secretary signs the agreement.

Proposed Regulations: We propose to redesignate current § 668.14(e) as § 668.14(h). The Department also proposes to add a new paragraph (e) that outlines a non-exhaustive list of conditions that we may opt to apply to provisionally certified institutions. We propose for institutions at risk of closure to submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. We also propose that institutions at risk of closure must submit an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented, to the Department. We also propose for an institution at risk of closure that is teaching out, closing, or that is not financially responsible or administratively capable, to release holds on student transcripts. Other conditions for institutions that are provisionally certified would include—

- Restrictions or limitations on the addition of new programs or locations;
- Restrictions on the rate of growth, new enrollment of students, or Title IV, HEA volume in one or more programs;
- Restrictions on the institution providing a teach-out on behalf of another institution;
- Restrictions on the acquisition of another participating institution, which may include, in addition to any other required financial protection, the posting of financial protection in an amount determined by the Secretary but not less than 10 percent of the acquired institution's Title IV, HEA volume for the prior fiscal year;
- Additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements;
- Limitations on the institution entering into a written arrangement with another eligible institution or an ineligible institution or organization for that other eligible institution or ineligible institution or organization to provide between 25 and 50 percent of the institution's educational program under § 668.5(a) or (c);
- For an institution alleged or found to have engaged in misrepresentations to students, engaged in aggressive recruiting practices, or violated incentive compensation rules, requirements to hire a monitor and to submit marketing and other recruiting materials (*e.g.,* call scripts) for the review and approval of the Secretary.

Reasons: We propose new language under § 668.14(e), and to redesignate current § 668.14(e) as § 668.14(h). The Department proposes a non-exhaustive list of conditions in new paragraph (e) to ensure greater monitoring and oversight on provisionally certified institutions where we may already have concerns. This non-exhaustive list of conditions would allow the Department to formalize tools that are currently available but are not typically used. The list of conditions we have included proactively address some of the issues we have seen with some provisionally certified institutions, namely those at risk of closure, those that are teaching out or closing, and those that are not financially responsible or administratively capable. We propose a non-exhaustive list because we do not want to foreclose any current flexibility that we have with respect to monitoring provisionally certified institutions and we will publish updates to the list as needed. The proposed § 668.14(e)(2) respond to concerns regarding transcript withholding we heard during negotiations. Several negotiators stated that students of color are disproportionately unable to access their transcripts due to transcript withholding. In addition, one negotiator stated that if an institution was being considered as a risk for closure, most students would want to transfer institutions, but transcript holds for certain amounts would negatively impact a student's ability to transfer to another institution. Accordingly, we have expanded the provisional conditions related to transcript withholding to increase students' access to their educational records at institutions with risk of closure or institutions that are not financially responsible or administratively capable. Moreover, we believe the other conditions under proposed paragraph (e) for institutions at risk of closure would better protect students from sudden closures that often leave them without opportunities to complete their credentials or to transfer to another institution. As described in a GAO report,[145] school closures derail the education of many students, leaving them with loans but no degree. In fact, college closure represented the end of many borrowers' educational pursuits. Forty-three percent of borrowers enrolled at a college that closed did not complete their program or continue their education by transferring to another college.

The proposed restrictions and limitations are directed at institutions we already have significant concerns with. These proposed conditions would make it easier to manage the size of a risky institution and ensure that it does not keep growing when it may be in dire straits. Specifically, we propose expressly providing the authority to limit the addition of new programs and locations, including in cases where we have concerns about an institution's ability to adequately administer aid for

[145] GAO Report, GAO–21–105373, ''Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges'', Sept. 30, 2021. *www.gao.gov/products/gao-21-105373.*

the programs they currently offer. In addition, we propose expressly authorizing restrictions on the rate of growth, new enrollment of students, or Title IV, HEA volume in one or more programs. Such restrictions would help the Department manage an institution's risk of imminent closure and mitigate the resulting harms to students.

We also propose prohibiting provisionally certified institutions to provide a teach-out on behalf of another institution. As GAO found,[146] some borrowers who transfer after a school closure end up at a school that later shuts its doors as well. From 2014 through 2020, nearly 11,500 borrowers transferred from a closing college to another college that subsequently closed, accounting for about 5 percent of borrowers affected by closures in that time. The government's interest is to provide students the best possible chance of finishing their education, and this could be substantially more challenging for students if they transfer to institutions that are not providing adequate academic resources, are not financially stable, are subject to State or accrediting agency actions or program review findings, or generally lack administrative capability. We propose to expressly authorize the Department to prevent institutions in these situations from acquiring other institutions or participating in teach-outs of closing institutions to limit risk to students. We also propose allowing for additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements to monitor the institution's progress. In addition, we propose allowing limitations on written arrangements in which another eligible institution or ineligible organization would provide more than 25 percent of a program because we are concerned about institutions outsourcing their education to unregulated companies or to other institutions. As indicated in DCL (GEN–22–07),[147] the Department is aware of several arrangements between eligible institutions and ineligible entities that have exceeded the regulatory limitations in § 668.5. For example, the Department has witnessed cases where a program was offered in its entirety by an ineligible entity, but the program was inaccurately represented as being offered by the eligible institution for the primary purpose of obtaining title IV, HEA funds for an otherwise ineligible program.

Furthermore, we are concerned with institutions that engage in misrepresentation and aggressive recruitment because often these programs are not what they advertise, and consequently this increases the likelihood of students filing a borrower defense to repayment or false certification claim. As defined in subpart F of part 668, misrepresentation includes false, erroneous, or misleading statements, by an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services made directly or indirectly to a student, prospective student, or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. An eligible institution has engaged in aggressive and deceptive recruitment tactics or conduct when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, lead generation, recruiting, or admissions services, engages in one or more of the prohibited practices in § 668.501. We propose that an institution alleged or found to have misrepresented students, engaged in aggressive recruiting practices, or that has violated incentive compensation rules, may be required to hire a monitor and submit marketing and other recruiting materials (*e.g.,* call scripts) for the Department to review and approve. We included the hiring of a monitor as a possible requirement because we believe a monitor would help us get information that we do not readily get from audits. Conditions for institutions that undergo a change in ownership seeking to convert from a for-profit to a nonprofit institution (§ 668.14(f)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(i) outlines the treatment of changes of ownership.

Current Regulations: Current § 668.14(f) states that except as provided in current paragraphs § 668.14(g) and (h), the Secretary terminates a PPA through the proceedings in subpart G of part 668.

Proposed Regulations: We propose to redesignate current § 668.14(f) as § 668.14(i). The Department proposes to add a new paragraph (f) that outlines conditions that would be applied to institutions that undergo a change in ownership seeking to convert from a for-profit institution to a nonprofit institution. The first condition we propose is for the institution to continue to meet the revenue percentage requirements under § 668.28(a) until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years in which the institution meets the requirements of § 668.14(b)(16) under its new ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later. The second condition we propose is for the institution to continue to meet the GE requirements of subpart S of part 668 until we have accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years under its new ownership, or until we approve the institution's request to convert to a nonprofit institution, whichever is later. The third condition we propose is for the institution to submit regular and timely reports on agreements entered with a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution, so long as the institution participates as a nonprofit institution. In our fourth condition, we propose to prohibit an institution from advertising that it operates as a nonprofit institution for the purposes of title IV, HEA until the Department approves the institution's request to convert to a nonprofit institution. We also propose to apply any other conditions the Secretary deems appropriate to serve the interests of students and taxpayers and ensure compliance from institutions.

Reasons: We propose new language under § 668.14(f), thus the current § 668.14(f) would be redesignated as § 668.14(i). Proposed § 668.14(f) expands on recent changes made to § 600.31(d)(7), particularly on the Department's belief that it is reasonable to require institutions seeking to convert from for-profit to nonprofit status to continue to meet all the requirements applicable to for-profit colleges for the later of two complete consecutive years under the new ownership or until the Department approves the institution's request to convert to nonprofit status. The conversion from a for-profit to a nonprofit institution is among the

[146] Ibid.

[147] *www.fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-06-16/written-arrangements-between-title-iv-eligible-institutions-and-ineligible-third-party-entities-providing-portion-academic-program.*

riskier types of transactions we review, and we want to make certain that these transitions are not being made to evade financial consequences or federal oversight for the school, such as failures of the 90/10 rule or the proposed gainful employment requirements in this NPRM. As explained in the recent final rule [148] regarding changes in ownership (CIOs), a 2020 GAO report noted that of 59 CIOs (involving 20 separate transactions) involving a conversion from a for-profit entity to a nonprofit entity, one entire chain that comprised 13 separate institutions was granted temporary continued access to title IV, HEA aid but ceased operations prior to the Department reaching a decision on whether to approve the requested conversion to nonprofit status. Three-fourths of these CIOs involved sales to a nonprofit entity that had not previously operated an institution of higher education, a particular challenge given that many of the institutions involved in these CIOs had a history of lawsuits, settlements, and investigations into the practices of the underlying institutions that suggested students were not being served well. One-third of these CIOs had what GAO termed ''insider involvement'' in the purchasing of the nonprofit organization (*i.e.,* someone from the former for-profit ownership was also involved with the nonprofit purchaser), suggesting greater risk of impermissible benefits to those insiders. Altogether, the 59 institutions that underwent a change in ownership resulting in a conversion received more than $2 billion in taxpayer-financed Federal student aid in Award Year 2018–19. Given the potential risk in such transactions, we want to ensure that they occur in a way that protects students, the Department, and taxpayers. The conditions in proposed § 668.14(f) include complying with 90/10 and gainful employment requirements for the later of two years or until the Department approves the institution's request to convert to non-profit status. This ensures there is no change in oversight of 90/10 until a CIO has been thoroughly reviewed and approved. In addition, we believe it is necessary for an institution to submit agreements with the former owner of the institution to assess whether former owners are improperly benefitting from those agreements.[149] These concerns are detailed in final regulations related to change in ownership procedures that were published in the **Federal Register** on October 28, 2022, and include ensuring that the institution is operating as a nonprofit for the purposes of title IV aid and ensuring that the institution's revenues are not impermissibly benefiting the prior owner or other parties.[150] Lastly, we believe that if an institution's website or other public information describes its ownership structure as private, the institution should identify whether it participates in title IV, HEA programs as a nonprofit institution or a proprietary institution for clarity as we would consider an institution to be a for-profit institution until we have reviewed and approved the institution's application for nonprofit college status.

This list of conditions under proposed § 668.14(f) would address the interim period during which the Department is determining whether the institution seeking to convert from a for-profit institution to a nonprofit institution would be considered as a nonprofit institution for title IV, HEA purposes. The Department does not take a position regarding an institution being designated a 501(c)(3) tax-exempt status by the IRS. However, the institution would have to refrain from identifying itself as a nonprofit institution in any advertising publications or other notifications until the Department recognizes and approves the change of status. In other words, if the Department has not approved the institution as a non-profit for purposes of the federal student aid programs, then it cannot mislead prospective students or misrepresent itself as a ''nonprofit institution'' in the context of title IV, HEA aid. Using the term nonprofit prematurely could potentially confuse students and the public who may interpret nonprofit as the Department having granted the institution nonprofit status under its regulations, which would not be accurate. Thus, as the institution would still be considered a for-profit entity during this interim period, reporting requirements for the for-profit entity would continue to apply.

Conditions for Initially Certified Nonprofit Institutions, or Institutions That Have Undergone a Change of Ownership and Seek To Convert to Nonprofit Status (§ 668.14(g)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(i) outlines the treatment of changes of ownership.

Current Regulations: Current § 668.14(g) states conditions when an institution's PPA automatically expires.

Proposed Regulations: We propose to redesignate current § 668.14(g) as § 668.14(j). The Department proposes to add a new paragraph (g) that outlines conditions for initially certified nonprofit institutions, or institutions that have undergone a change of ownership and seek to convert to nonprofit status, which would apply upon initial certification or following the change in ownership. The first condition we propose is for the institution to submit reports on accreditor and State authorization agency actions and any new servicing agreements within 10 business days of receipt of the notice of the action or of entering into the agreement, as applicable. This condition would continue to apply until (1) the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years following initial certification, (2) two complete fiscal years after a change in ownership, or (3) until the Department approves the institution's request to convert to nonprofit status, whichever is later. Note that accreditors are already obligated to tell the Department about actions related to the institutions they accredit. Accreditors currently use the Database of Accredited Postsecondary Institutions and Programs (DAPIP) to submit these reports, but in proposed § 668.14(g) the institution, irrespective of what the accreditor does, would report this information to Department staff. The second condition we propose is for the institution to submit a report and copy of the communications from the IRS (Internal Revenue Service) or any State or foreign country related to tax-exempt or nonprofit status within 10 business days of receipt so long as the institution participates as a nonprofit institution. We also propose to apply any other conditions that the Secretary deems appropriate.

Reason: We propose new language under § 668.14(g), thus the current § 668.14(g) would be redesignated as § 668.14(j). In proposed § 668.14(g) the Department would be more hands-on with initially certified nonprofit institutions and institutions that have undergone a change of ownership and seek to convert to nonprofit status by helping them familiarize themselves with the Federal financial aid programs.

[148] 87 FR 65426.

[149] GAO Report, GAO–21–89, ''Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions'', Dec. 31, 2020. *www.gao.gov/products/gao-21-89*.

[150] 87 FR 65426.

With respect to proposed § 668.14(g) we believe it is important to obtain reports on accreditor and State authorization agency actions and any new servicing agreements quickly because we need access to the information to better assess the strength of the institution and confirm that it is complying with the requirements of the other members of the triad. The proposed language in § 668.14(g) would require institutions to report more information to the Department from accreditors, States, and the IRS ensures that the Department is made aware of any likely oversight actions by other key entities. This is an improvement over current conditions in which reporting may be irregular and is not required of institutions. Moreover, as part of GAO's report addressing risks associated with some for-profit college conversions, GAO recommended the IRS collect information that would enable the agency to systematically identify tax-exempt colleges with a for-profit history for audit and other compliance activities.[151] In the same GAO report, GAO recommended that the Department develop and implement monitoring procedures for staff to review the audited financial statements of all newly converted nonprofit colleges for the risk of improper benefit. We believe that looking over an institution's correspondence with the IRS would help us monitor institutions for any improper benefits from their conversions to nonprofit status.

Ability To Benefit

The Committee reached consensus on the Department's proposed regulations on ATB. The Department has published the proposed ATB amendatory language without substantive alteration to the agreed-upon proposed regulations.

General Definitions (§ 668.2)

Statute: Section 484(d)(2) of the HEA defines ''eligible career pathway program.''

Current Regulations: None.

Proposed Regulations: We propose to adopt almost the entire statutory definition of an ''eligible career pathway program'' in our regulations. Under the proposed definition, an ''eligible career pathway program'' would mean a program that combines rigorous and high-quality education, training, and other services that—

• Align with the skill needs of industries in the economy of the State or regional economy involved;

• Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*);

• Include counseling to support an individual in achieving the individual's education and career goals;

• Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

• Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

• Enable an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

• Help an individual enter or advance within a specific occupation or occupational cluster.

Reasons: This definition is in large part a duplication of the statute, which requires that students accessing title IV, HEA aid through ATB be enrolled in eligible career pathway programs. The Department has proposed to exclude the statutory definition's cross-reference to apprenticeship programs, which reads in the statute as ''(referred to individually in this chapter as an 'apprenticeship', except in section 171);'' [152] because we do not discuss apprenticeships elsewhere in part 668.

Student Eligibility—General (§ 668.32)

Statute: Section 484(d) of the HEA establishes the student eligibility requirement for students who are not high school graduates.

Current Regulations: Current § 668.32(e)(2) states that a student is eligible to receive title IV, HEA aid if the student has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of the student assistance general provisions. Subpart J delineates the process for approval of the independently administered tests and the specifications of passing scores, among other criteria.

Current § 668.32(e)(3) states that a student is eligible to receive title IV, HEA aid if he or she is enrolled in an eligible institution that participates in a State ''process'' that is approved by the Secretary under subpart J of part 34.

Current § 668.32(e)(5) provides that a student is eligible for title IV, HEA aid if the institution determines that the student could benefit from the education offered based on satisfactory completion of 225 clock hours or six semester, trimester, or quarter hours that are applicable toward a degree or certificate offered by the institution.

Proposed Regulations: Throughout §§ 668.32(e)(2), (3) and (5), we propose changes that clarify the differences between eligibility for students who enrolled before July 1, 2012, and students who enrolled on or after that date.

We propose to amend § 668.32(e)(2), by allowing for student eligibility for title IV, HEA aid if a student has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part, and either under proposed § 668.32(e)(2)(i) was first enrolled in an eligible program before July 1, 2012; or under proposed § 668.32(e)(2)(ii) is enrolled in an eligible career pathway program as defined in section 484(d)(2) on the HEA.

We propose to amend § 668.32(e)(3) by allowing for student eligibility for title IV, HEA aid if a student is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of this part, and either was first enrolled in an eligible program before July 1, 2012; or (ii) is enrolled in an eligible career pathway program as defined in section 484(d)(2) of the HEA.

We propose to amend § 668.32(e)(5), by allowing for student eligibility for title IV, HEA aid if it has been determined by the institution that the student has the ability to benefit from the education or training offered by the institution based on the satisfactory completion of six semester hours, six trimester hours, six quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution, and either: (i) was first enrolled in an eligible program before July 1, 2012; or (ii) is enrolled in an eligible career pathway program as defined in section 484(d)(2) of the HEA.

Reasons: These are technical changes. Section 309(c), Division F, title III of the 2011 amendments to the HEA (Pub. L. 112–74), allows students who were enrolled prior to July 1, 2012, to continue to be eligible for title IV, HEA aid under the previous ability to benefit alternatives. The Department discussed the amendment in Dear Colleague Letter

[151] Ibid.

[152] This reference to ''section 171'', may have been intended as a reference to section 171 of the Workforce Innovation and Opportunity Act, Public Law 113–128, which is classified to section 3226 of Title 29, Labor. Neither the National Apprenticeship Act nor the HEA contains a section 171.

GEN–12–09 (June 28, 2012),[153] where we explained that the new provision in the 2014 amendments did not affect the eligibility of students first enrolled in an eligible program or registered to attend an eligible institution prior to July 1, 2012.

The 2014 amendments to the HEA, enacted on December 16, 2014 (Pub. L. 113–235), amended section 484(d) to allow a student who does not have a high school diploma or its recognized equivalent, or who did not complete a secondary school education in a homeschool setting, to be eligible for title IV, HEA aid through the three ATB alternatives discussed in the Background section of this NPRM, but only if the student is enrolled in an eligible career pathway program. These technical changes to the regulatory text would further clarify how student eligibility applies in each case.

Approved State Process (§ 668.156)

Statute: Section 484(d)(1)(A)(ii) of the HEA states that a non-high school graduate shall be determined as having the ability to benefit from the education or training in accordance with such process as the State prescribes.

Current Regulations: Section 668.156(a) provides that the State process is one of the ATB alternatives. Under this section, if a State wishes the Department to consider its State process, that State must list all of the institutions that will participate in the State process.

Section 668.156(b) requires that if a State wishes the Department to consider its state process, the State submit a success rate for non-high school graduates that is within 95 percent of the success rate of students with high school diplomas. The method for calculating the success rate is described in § 668.156(h) and (i).

Section 668.156(c) requires that the participating institution provide certain services to each student admitted through the State process, which generally include orientation, assessment of the student's existing capabilities, tutoring, counseling, and follow-up by teachers and counselors regarding student performance.

Section 668.156(d) requires that if a State wishes the Department to consider its State process, a State monitor each participating institution on an annual basis, prescribe corrective action for noncompliant institutions, and terminate the participation of an institution that refuses or fails to comply. Section 668.156(e) requires the Secretary to respond to a State's application within six months or the application is automatically approved. Section 668.156(f) stipulates that the State process can be approved for up to five years.

Section 668.156(g) provides the Secretary with the authority to withdraw the State process if the State violates any part of § 668.156. This provision also provides the State with an appeal process.

Proposed Regulations: The Department proposes to restructure the section and add several new provisions to § 668.156.

In § 668.156(a)(1) we propose to update the regulations to include the six-credit hour ATB alternative in section 484(d)(1)(A)(iii). Currently the regulations list only the test alternative and the State process.

Under § 668.156(a)(2) we propose that a State, in its application for the State process:

- List all institutions that would be eligible to participate in the State process.
- Describe the requirements that participating institutions must meet to offer eligible career pathway programs under that process.
- Certify that each proposed eligible career pathway program meets the definition under § 668.2 and documentation requirements under § 668.157 as of the submission date of the application.
- List the criteria used to determine student eligibility in the State process.
- Exclude from participation in the State process any institution that has a withdrawal rate that exceeds 33 percent of the institution's undergraduate regular students. Institutions must count all regular students who were enrolled during the latest completed award year, except those students who withdrew from, dropped out of, or were expelled and received a refund of 100 percent of their tuition and fees.

In § 668.156(a)(3) we propose that the Secretary would verify that a sample of eligible career pathway programs offered by institutions participating in the State process meet the definition of an eligible career pathway program.

We propose to separate the State process application into the initial application process, as described under § 668.156(b), and a subsequent application process, as described under § 668.156(e). All applications, whether initial or subsequent, would comply with requirements under § 668.156(a). In both the initial and subsequent applications, we propose to remove the services required under current § 668.156(c), and instead those services would largely appear under the definition of an eligible career pathway program in proposed § 668.157.

In § 668.156(b)(1) we propose that a State's initial application may be approved for two years if the State satisfies requirements under proposed § 668.156(a), discussed above, and proposed §§ 668.156(c) and (d), which are discussed later in this section. Under proposed § 668.156(b)(2), the States would be required to agree not to exceed enrollment under the State process of more than 25 students or one percent of the enrollment, whichever is greater, at each participating institution.

In § 668.156(c)(1) we propose that institutions must adhere to the student eligibility requirements under § 668.32 for access to title IV, HEA aid. We also propose that States must ensure monitoring of the institutions that fall within the State process and take appropriate action in response to that monitoring, including:

- On an annual basis, monitoring each participating institution's compliance with the State process, including the success rate requirement;
- Requiring corrective action if an institution is found to be noncompliant with the State process;
- Providing participating institutions up to three years to come into compliance with the success rate if, in the State's subsequent application for continued participation of the State process, an institution fails to achieve the success rate required under proposed § 668.156(e)(1) and (f); and
- Requiring termination of a participating institution from the State process if there is a refusal or failure to comply.

Proposed § 668.156(d) simply redesignates the current § 668.156(e), with the language otherwise unchanged.

We propose to outline the new subsequent application process under the new § 668.156(e). Each participating institution would be required to calculate a success rate for non-high school graduates that is within 85 percent of the success rate of students with high school diplomas. We would require the State to continue to comply with proposed §§ 668.156(a) and (c)(related to the contents of the application and monitoring requirements for the State). We would require the State to report information about participating students in eligible career pathway programs, including disaggregated by race, gender, age, economic circumstances, and educational attainment, related to their enrollment and success. Current § 668.156(d), which relates to the

[153] *ifap.ed.gov/dear-colleague-letters/06-28-2012-gen-12-09-subjecttitle-iv-eligibility-students-without-valid-high.*

Secretary's approval of the State process application, would continue to apply.

We propose several changes from current regulations under § 668.156:

- The success rate would be 85 percent. Currently it is 95 percent.
- The success rate would be calculated and reported separately for every institution. Currently the success rate combines all institutional data into one calculation.
- The success rate for participating institutions would compare non-high school graduates to high school graduates in the same programs. Currently the regulation compares non-high school graduates to high school graduates in any program.

Current § 668.156(i), which states that the success rate would be based on the last award year for which data are available during the last two completed award years before the application is submitted, would be redesignated as proposed § 668.156(g)(1). The Department proposes to remove the requirement that the data come from the last two completed award years. The Department also proposes to add a new § 668.156(g)(2), to allow that if no students enroll through the State process during the initial approval, we would extend the approval for one additional year.

The Department also proposes under § 668.156(h) to require States to submit reports on their process in accordance with deadlines and procedures established in a notice published in the **Federal Register**. Proposed § 668.156(i), which states that the maximum length of the State process approval is five years, is simply redesignated from current § 668.156(f), which includes the same maximum length.

Finally, proposed § 668.156(j)(1) clarifies that the Secretary would withdraw approval of the State process for violation of the terms of § 668.156 or for the submission of inaccurate information. Proposed § 668.156(j)(1)(i) would provide that this withdrawal of approval occurs if the State fails to terminate an institution from participation in the State process after its failure to meet the success rate. However, proposed § 668.156(j)(1)(ii) would provide that, under exceptional circumstances determined by the Secretary, the State process can be approved once for a 2-year period. If more than 50 percent of participating institutions across all States do not meet the 85 percent success rate requirement, proposed § 668.156(j)(1)(iii) provides that the Secretary may lower the success rate to no less than 75 percent for two years. Current § 668.156(g)(2) would be redesignated as proposed § 668.156(j)(2) and would state that the Secretary provides the State an opportunity to contest a finding that the State process violated the requirements of the section or that the information submitted was inaccurate. Under proposed § 668.156(j)(3), we propose that if the Secretary's termination of a State process is upheld after the appeal, the State cannot reapply to the Department for approval of a State process for five years.

Reasons: The change made to proposed § 668.156(a)(1) is a technical update to include the six-credit hour or recognized equivalent alternative as defined in section 484(d)(1)(A)(iii) of the HEA so that the list of alternatives in regulation is complete.

Proposed § 668.156(a)(2) describes documentation that would be required in both the initial and subsequent applications. The requirement to provide a list of participating institutions in proposed § 668.156(a)(2)(i) aligns with the current regulation. In § 668.156(a)(2)(ii), we propose to require a list of standards that participating institutions must meet to offer an eligible career pathway program under the State process as an alternative to including the list of particular services that must be required of institutions under current § 668.156(c). We believe that the eligible career pathway program definition we propose to add to the regulations includes substantially similar types of services; and cross-referencing to that list would provide more clarity to the field about how the State process connects to the definition of an eligible career pathway program. We also propose under § 668.156(a)(2)(iii) to require institutions to certify that the eligible career pathway program offered by participating institutions under the State process meets the regulatory definition and documentation requirements. This certification would provide greater assurances to the Department that institutions are compliant with the statutory requirements for ability to benefit, provide greater certainty that students utilizing ability to benefit would receive the support services they need to succeed, and would protect taxpayers from investing Federal financial aid dollars in programs that do not meet the intended requirements. For those reasons, we believe that the Secretary need only approve a sample of eligible career pathway programs. To better understand the State process as it relates to students, and to ensure that States have a process sufficiently rigorous to comply with the law, the Department requires that student eligibility criteria be outlined in all applications, as described under proposed § 668.156(a)(2)(iv). This would also provide deeper insights into the landscape of programming that States and institutions are providing to students who have not earned a high school diploma or equivalent. Proposed § 668.156(a)(2)(v) would require that all institutions listed for the first time on an application not have a withdrawal rate of over 33 percent as a consumer protection. This is similar to the current administrative capability regulations in § 668.16(l), which apply to all institutions seeking initial certification to participate in the Federal aid programs. We believe that students who have not yet earned a high school diploma or equivalent require substantial supports to ensure they are able to succeed. As we noted when we added the withdrawal rate measure as an eligibility requirement, the Secretary believes that these rates are appropriate measures of an institution's past administrative performance, and that withdrawal rates are a function of overall institutional performance and the support services that are provided to students. The Department proposes under § 668.156(e)(1) to move the success rate calculation (the outcome metric) to the subsequent application, since we recognize that before the State process is in place, it is unlikely the State or its institutions would have calculated a rate and may not even have enrolled students through ability to benefit. The Department is aware that this challenge has kept many States from being able to submit a complete State process application and believes this change would provide States with sufficient time to make the success rate calculation.

Proposed § 668.156(b) describes the initial application process. Currently, the regulations require the success rate to be included as a part of States' first application to the Secretary. No currently approved State has provided the success rate as a part of its application. The current success rate formula outlined in current § 668.156(h) does not take into account eligible career pathway programs, therefore, it has been difficult for the Department to provide a consistent application to States. Further, many States would not be able to complete the success rate calculation unless participating institutions have their own funds to enroll non-high school graduates under a State process for at least a year. The current regulation at § 668.156(b)(1) references students it admits ''under that process'', meaning that participating institutions must be enrolling non-high school graduates into programs prior to their application to the Department, which is very difficult for institutions without funds to support such students. Therefore, the Department proposes to give States more time in their State process to gather the necessary data to calculate the success rate after students become eligible for Title IV, HEA aid.

In proposed § 668.156(b)(2), the Department initially proposed to the Committee a one percent cap on enrollment through the State process at each participating institution. This cap is intended to serve as a guardrail against the rapid expansion of eligible career pathway programs. We believe these protections are particularly important because the required success metric is no longer included at the initial application of a State process. A committee member believed the cap on enrollment in the initial phase would restrict enrollment at smaller institutions and suggested that the cap be established as the greater of a one percent on enrollment or 25 students at each participating institution. The Committee adopted that committee member's suggestion.

Proposed § 668.156(c) generally incorporates current § 668.156(d), in that it would require the State to ensure annual monitoring, corrective action, and termination of institutions that refuse or fail to comply with the State process. Proposed § 668.156(c)(1) simply conveys that States and participating institutions must comply with title IV, HEA student eligibility requirements. We propose to add § 668.156(c)(4), which would allow an institution that does not meet the success rate requirements up to three years to come back into compliance. This would provide some latitude to States to ensure that the failure to meet the success rate requirement is not due just to a single-year variation and would grant institutions some time to demonstrate improved outcomes, while ensuring that institutions that continue to miss the required rate are not permitted to participate in the State process indefinitely. In § 668.156(c)(6), we propose to prohibit an institution that has been terminated from the State process from participating for at least five years after the action because we believe that is a reasonable amount of time for the institution to rectify issues before returning to the State process. This timeline also mirrors the proposed limitation in § 668.156(j)(1)(v) that limits a State for which the Secretary has withdrawn approval of the State process from reapplying for a State process for at least five years after the withdrawal.

Proposed § 668.156(e) establishes the requirements for the subsequent application. During the negotiations, the Department originally wanted to maintain the 95 percent success rate requirement established in current regulations. However, the Department ultimately accepted a committee member's recommendation of lowering the success rate from 95 percent to 85 percent in proposed § 668.156(e)(1) because the member believed that 95 percent is too difficult to achieve. The Department views this change as necessary to achieve consensus, and notes all of the other guardrails and consumer protections that would be put in place under the proposed changes to § 668.156, which would ensure adequate student protections are in place even with a lower success rate. The new proposed protections include withdrawal rate considerations, caps on initial enrollment, review of a sample of eligible career pathway programs during the application review to ensure that they meet the requirements in the regulations, enhanced reporting by States, and expanded Departmental authority to terminate a State process and bar participation for five years. The Department also notes that, given an absence of existing data to either support or contradict the 95 percent success rate, there is limited information with which to consider this requirement; to that end, we invite commenters to submit additional information about the success rates of ATB students to further inform this rulemaking. Proposed § 668.156(e)(3) would require that States report on the demographic information of participating students and on their outcomes because the Department seeks to implement section 484(d) of the HEA, which requires the Department to take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions. The Department also believes that ensuring diversity, disaggregating data to assess the outcomes of all students and student subgroups and promoting equitable success for students are critical goals and central to the purpose of the title IV, HEA programs.

The overall structure of the success rate calculation under proposed § 668.156(f) is based in large part on the success rate formula in current § 668.156(h). Due to the implementation of the eligible career pathway programs as a requirement for students that fulfill an ATB alternative, not reflected in the current regulations, we believe that it is necessary to further clarify the comparison groups for the formula. In particular, proposed § 668.156(f) would clarify that the success rate must be calculated for each participating institution, rather than as an overall number for the State. We also believe this would be better for States because if one institution continually fails to produce the required success rate, that specific institution would be removed from the State process without risking the termination of the entire State process and every participating institution that falls under that process. Proposed § 668.156(f)(1) would compare students in the same programs because we believe it would yield more relevant outcomes data about specific programs. Currently students in the State process are compared to all high school graduates in any program, even if they were not programs that students admitted through the State process engaged in. We do not believe the comparison is targeted enough to yield data that States, participating institutions, or the Department could use in making determinations about the State process.

We propose to provide participating institutions two years of initial approval, so they have sufficient time to collect data needed to calculate and report the success rate. Accordingly, we propose to revise § 668.156(g)(1) to reflect that the data used in calculating the success rate must be from the prior award year, rather than from either of the two prior award years. We also recognize that some States may not see significant enrollment, and in fact, may have years in which no ATB student enrolls in an eligible career pathway program. Accordingly, in proposed § 668.156(g)(2), we would provide those States with a one-year extension to the initial approval to allow for more time to enroll students to calculate a success rate.

To have sufficient access to relevant and timely data about the State process, and to provide for adequate oversight of States' efforts and the outcomes at their participating institutions, proposed § 668.156(h) would require States to submit reports in accordance with processes laid out in a **Federal Register** notice. This would also aid us in monitoring areas where policy changes may be needed to better support States, institutions, and ATB students.

Finally, proposed § 668.156(j) would grant the Secretary the authority to rescind a State process approval and would grant the State an appeal process. There was already similar language in current § 668.156(g) but we believe that the proposed language provides a clearer framework. Furthermore, similar enforcement and due process requirements are included throughout other parts of the Department's regulations. Among the changes from current regulations, the Department proposes in § 668.156(j)(1)(iii) to clarify that the Secretary may lower the success rate to not less than 75 percent in the event that more than 50 percent of participating institutions across all States fail the 85 percent success rate requirement. Given that there is little information available about the current success rates of ATB students, we believe that this ability to lower the requirement if most institutions are unable to meet the requirement would provide some ability for the Department to act in the event a change in the standard is needed. This may also account for years in which external circumstances, like those seen during the pandemic, may necessitate a system-wide accommodation. The Department believes that, by setting a floor of not less than 75 percent, proposed § 668.156(j) would still protect ATB students from poor-performing institutions and ensure they have access to quality opportunities.

Directed Questions

The Committee reached consensus on the Department's proposed regulations on ATB. The Department has published the proposed ATB amendatory language without substantive alteration to the agreed-upon proposed regulations. We would like additional feedback on the regulations to further inform the rulemaking process.

We propose a success rate calculation under proposed § 668.156(f) and would like to receive public comments specific to this success rate calculation) to further inform this rulemaking. We specifically request comments on the proposed 85 percent threshold, the comparison groups in the calculation, the components of the calculation, and whether the success rate itself is an appropriate outcome indicator for the State process as well as any other information, thoughts, or opinions on the success rate calculation. For more information on § 668.156(f), please see the information discussed previously in this section and also the current regulations in § 668.156(h). You can also review the proposed regulatory language.

Eligible Career Pathway Program (§ 668.157)

Statute: Section 484(d)(2) of the HEA defines an eligible career pathway program.

Current Regulations: None.

Proposed Regulations: The Department proposes to create new § 668.157 in subpart J. This section would dictate the documentation requirements for eligible career pathway programs for submission to the Department for approval as a title IV, HEA eligible program. In proposed § 668.157(a)(1) an institution would demonstrate to the Secretary that a student is enrolled in an eligible career pathway program by documenting that the student has enrolled in or is receiving all three of the following elements simultaneously—

- An eligible postsecondary program as defined in § 668.8;
- Adult education and literacy activities under the Workforce Innovation and Opportunity Act as described in § 463.30 that assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training; and
- Workforce preparation activities as described in § 463.34.

In proposed § 668.157(a)(2) an institution would demonstrate to the Department that a student is enrolled in an eligible career pathway program by documenting that the program aligns with the skill needs of industries in the State or regional labor market in which the institution is located, based on research the institution has conducted, including—

- Government reports identifying in-demand occupations in the State or regional labor market;
- Surveys, interviews, meetings, or other information obtained by the institution regarding the hiring needs of employers in the State or regional labor market; and
- Documentation that demonstrates direct engagement with industry;

In proposed § 668.157(a)(3) through (a)(6), an institution would demonstrate to the Department that a student is enrolled in an eligible career pathway program by documenting the following:

- The skill needs described in proposed § 668.157(a)(2) align with the specific coursework and postsecondary credential provided by the postsecondary program or other required training;
- The program provides academic and career counseling services that assist students in pursuing their credential and obtaining jobs aligned with the skill needs described in proposed § 668.157(a)(2), and identifies the individuals providing the career counseling services;
- The appropriate education is offered, concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster through an agreement, memorandum of understanding, or some other evidence of alignment of postsecondary and adult education providers that ensures the secondary education is aligned with the students' career objectives; and
- The program is designed to lead to a valid high school diploma as defined in § 668.16(p) or its recognized equivalent.

Under § 668.157(b) we propose that, for career pathway programs that do not enroll students through a State process as defined in § 668.156, the Secretary would verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to proposed § 668.157(a). Under proposed § 668.157(b), we would also provide an institution with the opportunity to appeal any adverse eligibility decision.

Reasons: Currently, we do not approve individual career pathway programs and have provided minimal guidance on documentation requirements. The Department is aware of compliance and program integrity concerns with programs that claim to offer an eligible career pathway program but do not offer all the required components. While the Department believes that many institutions have made a good-faith effort to comply with the statutory definition, we believe it is necessary to establish baseline requirements in regulation to curtail bad actors' efforts to provide subpar programming. These baseline requirements would also support good actors by providing further regulatory clarity to support their efforts, weeding out subpar eligible career pathway programs, and steering students towards eligible career pathway programs with better outcomes.

This new section provides a reasonable baseline for documentation requirements and allows the Department to better enforce the eligible career pathway program statutory requirement through approval of all eligible career pathway programs that enroll students through the six-credit and ATB test options. We received a suggestion from a committee member to better align eligible career pathway programs with integrated education and training programs. Proposed § 668.157(a)(1) would do this by referring to adult education and literacy programs, activities, and workforce preparation activities described under the Workforce Innovation and Opportunity Act (WIOA) implementing regulations (§ 463.30 and § 463.34).

In proposed § 668.157(a)(2), we clarify that the eligible career pathway program would have to align with the skill and hiring needs of the industry. By proposing that there be direct interaction by the institution with a government source and that the collaboration is supported by other means that demonstrate engagement with industry, we believe that institutions would produce stronger analyses and demonstrate clearer connections with the workforce needs of their communities. Proposed § 668.157(a)(3) supports the language in proposed § 668.157(a)(2) by mandating that the coursework and postsecondary credential would also have to align to these industry needs. We believe this would provide for further connections between students' academic and career needs, and ultimately would help to ensure that students are able to obtain a career in their intended field.

The documentation required under proposed § 668.157(a)(4) is similar to section 484(d)(2)(C) of the HEA, which requires academic and career counseling. Proposed § 668.157(a)(5), which also largely mirrors section 484(d)(2)(D) of the HEA, proposes further requirements regarding evidence of coordination to ensure better alignment of adult education with post-secondary education. The language in proposed § 668.157(a)(5) would not require an institution to develop a new adult education curriculum to offer an eligible career pathway program, as it would allow for workforce preparation activities and training to be offered through an agreement, memorandum of understanding, or some other evidence of alignment. The documentation proposed under § 668.157(a)(6) reflects the statutory requirement in section 484 of the HEA that requires the program to lead to a valid high school diploma for ATB students.

Under proposed § 668.157(b), we would review and approve every eligible career pathway program that enrolls students through means other than exclusively the State process. This is to ensure that the programs comply with the regulatory definition and documentation requirements. By requiring this verification, the Department would be able to address existing issues by which some programs may have failed to meet statutory requirements and have still received aid for ATB.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This proposed regulatory action will have an annual effect on the economy of more than $100 million because the proposed Financial Value Transparency and GE provisions of the regulations alone could impact transfers between postsecondary institutions, the Federal Government, and borrowers in excess of this amount. Annualized transfers between borrowers and the Federal Government are estimated to be $1.1 billion at a 7 percent discount rate and $1.2 billion at a 3 percent discount rate in reduced Pell Grants and loan volume. This analysis also estimates additional annualized transfers of $836 million (at a 3 percent discount rate; $823 million at 7 percent discount rate) among institutions as students shift programs and estimated annualized paperwork and compliance burden of $115.1 million (at a 3 percent discount rate; $118 million at a 7 percent discount rate) are also detailed in this analysis Therefore, this proposed action is economically significant and subject to review by OMB under section 3(f)(1) of Executive Order 12866. We therefore have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, summarize the key provisions, present a detailed analysis of the Financial Value Transparency and GE provisions of the proposed regulation, discuss the potential costs and benefits, estimate the net budget impacts and paperwork burden as required by the Paperwork Reduction Act, discuss distributional consequences, and discuss regulatory alternatives we considered. The

Financial Value Transparency and GE provisions are the most economically substantial components of the package, so we include a much more detailed quantitative analysis of these components than the others and focus on the budget impact of these provisions. For the purposes of the analysis contained in this RIA, we combine the Financial Value Transparency and GE parts of the regulation. However, we do present many results separately for eligible non-GE programs (only subject to programmatic reporting and acknowledgment requirements) and GE programs (additionally subject to ineligibility and warnings about eligibility). Economic analysis for the proposed Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit rules are presented separately.

The proposed Financial Value Transparency and GE regulations aim to generate benefits to students, postsecondary institutions, and the Federal government primarily by shifting students from low financial value to higher financial value programs or, in some cases, from low-financial-value postsecondary programs to non-enrollment.[154] This shift would be due to improved and standardized market information about all postsecondary programs, allowing for better decision making by students, prospective students, and their families; the public, taxpayers, and the government; and institutions. Furthermore, the proposed GE regulations aim to improve program quality by directly eliminating the ability of low-financial-value programs to participate in the title IV, HEA programs. Our analysis concludes that this enrollment shift and improvement in program quality would result in higher earnings for students, which would generate additional tax revenue for the Federal, State, and local governments. Students would also likely benefit from lower accumulated debt and lower risk of default. The primary costs of the proposed regulations would be the additional reporting required by institutions, the time necessary for students to acknowledge having seen program information and warnings, and additional spending at institutions that accommodate students that would otherwise attend failing programs. We anticipate that the proposed regulations would also generate substantial transfers, primarily in the form of title IV, HEA aid shifting between students, postsecondary institutions, and the Federal government. Based on our analysis, we conclude that the benefits outweigh the costs.

The proposed regulatory actions related to Financial Responsibility, Administrative Capability, and Certification Procedures would provide benefits to the Department by strengthening our ability to conduct more proactive and real-time oversight of institutions of higher education. Specifically, under the Financial Responsibility regulations, the Department would be able to more easily obtain financial protection that can be used to offset the cost of discharges when an institution closes or engages in behavior that results in approved defense to repayment claims. The proposed changes to the Certification Procedures would allow the Department more flexibility to increase its scrutiny of institutions that exhibit concerning signs, including by placing them on provisional status or adding conditions to their program participation agreement. For Administrative Capability, we propose to expand the requirements to address additional areas of concern that could indicate severe or systemic administrative issues in properly managing the title IV, HEA programs, such as failing to provide adequate financial aid counseling including clear and accurate communications or adequate career services. Enhanced oversight ability would better protect taxpayers and help students by dissuading institutions from engaging in overly risky behavior or encouraging institutions to make improvements. These benefits would come at the expense of some added costs for institutions to acquire additional financial protection or potentially shift their behavior. The Department believes these benefits of improved accountability would outweigh those costs. There could also be limited circumstances in which an institution that was determined to lack financial responsibility and required to provide financial protection could choose to cease participating in the Federal aid programs instead of providing the required financial protection. The Department believes this would be most likely to occur in a situation in which the institution was already facing severe financial instability and on the verge of abrupt closure. In such a situation, there could be transfers from the Department to borrowers that occur in the form of a closed school loan discharge, though it is possible that the amount of such transfers is smaller than what it would otherwise be as the institution would not be operating for as long a period of time as it would have without the request for additional financial protection. However, the added triggers are intended to catch instances of potential financial instability far enough in advance to avoid an abrupt closure.

Finally, the ability-to-benefit regulations would provide much-needed clarity on the process for reviewing and approving State applications to offer a pathway into title IV, HEA aid for individuals who do not have a high school diploma or its recognized equivalent. Although States would incur costs in pursuing the application proposed, for this population of students, the proposed regulations would provide students with more opportunities for success by facilitating States' creation and expansion of options.

1. Need for Regulatory Action

Summary

The title IV, HEA student financial assistance programs are a significant annual expenditure by the Federal government. When used well, Federal student aid for postsecondary education can help boost economic mobility. But the Department is concerned that there are too many instances in which the financial returns of programs leave students with debt they cannot afford or with earnings that leave students no better off than similarly aged students who never pursued a postsecondary education.

The Department is also concerned about continued instances where institutions shut down without sufficient protections in place and with no prior notice for students, including instances where they do so without identifying alternative options for students to continue their education. For instance, one study found that 70 percent of students—more than 100,000 students—affected by a closure between July 2004 and June 2020 were subjected to a sudden closure where there was minimal notice and no teach out agreement in place.[155] Many of the students affected by such closures may obtain a closed school discharge, but even that financial assistance cannot make up for lost time invested in a program or out of the labor force or any out-of-pocket payments made. Significant shares of such students also no longer continue any sort of postsecondary program. This same

[154] We use the phrase ''low-financial-value'' at various points in the RIA to refer to low-earning or high-debt-burden programs that fail debt-to-earnings and earnings premium metrics.

[155] *https://nscresearchcenter.org/wp-content/uploads/SHEEO-NSCRCCollegeClosuresReport.pdf.*

study found that less than half of students reenrolled after they experienced a closure and students who went through an abrupt closure had significantly worse reenrollment and completion outcomes. Taxpayers are also often left to bear the costs of student loan discharges because existing regulations lack sufficient mechanisms for the Department to seek financial protection from an institution before it suddenly closes. Having tools for obtaining stronger upfront protection is particularly important because many of the institutions that close suddenly exhibited a series of warning indicators in the weeks, months, and years leading up to their shuttering. Thus, while the Department would not have been able to anticipate the exact date an institution would cease operating, greater regulatory flexibility would have allowed the Department to act faster to obtain taxpayer protection, more closely monitor or place conditions on the institution, and gain additional protection for students such as a teach-out plan or agreement that would allow them to transfer and continue their education. Going forward this flexibility could have a deterrent effect to dissuade institutions from engaging in some of the risky and questionable behavior that ultimately led to their closure.

We have also found during program reviews that there are institutions receiving title IV, HEA aid that lack the administrative capability necessary to successfully serve students. Some of these indicators of a lack of administrative capability can involve direct negative effects on students, such as having insufficient resources to deliver on promises made about career services and externships, or controls that are insufficient to ensure students' high school diplomas (or equivalent credentials) are legitimate—a key criterion for title IV, HEA student eligibility that may otherwise result in students taking on aid when they are not set up to succeed academically. In other situations, institutions may employ individuals who in the past exerted control at another institution that was found to have significant problems with the administration of the title IV, HEA student aid programs, which raises the concern that the institution may engage in the same conduct as the institution where the individual was previously involved, including mismanagement, misrepresentations, or other risky behaviors.

The Department is also concerned that, in the past, institutions have shown significant signs of problems yet remained fully certified to participate in the Federal student aid programs. Existing regulations do not fully account for the range of scenarios that might indicate risk to institutions or students. For instance, current regulations do not allow the Department to address how conditions placed on an institution's financing might affect their ability to have the funds necessary to keep operating or how outside investors might affect the health of an institution if those outside investors start to face their own financial struggles. The current regulations also limit the Department's ability to take swift action to limit the effects of an institution's closure on taxpayers and students. In the past, a lack of financial protection in place prior to an institutional closure has resulted in large amounts of closed school loan discharges that are not otherwise reimbursed by the institution. Moreover, borrowers whose institutions close while they are enrolled have high rates of student loan default. In addition to expanding the Department's capacity to act in such situations, the proposed changes to the regulation would help students by dissuading the riskier behavior by an institution that could result in a closure and by ensuring that more closures do not occur in an abrupt fashion with no plans for where students can continue their programs.

The proposed regulations would provide stronger protections for current and prospective students of programs where typical students have high debt burdens or low earnings. Under a program-level transparency and accountability framework, the Department would assess a program's debt and earnings outcomes based on debt-to-earnings (D/E) and earnings premium (EP) metrics. The regulations would require institutions to provide current and prospective students with a link to a Department website disclosing the debt and earnings outcomes of all programs, and students enrolling in non-GE programs that have failed debt-to-earnings metrics must acknowledge they have viewed the information prior to disbursing title IV, HEA funds. GE programs that consistently fail to meet the performance metrics would become ineligible for title IV, HEA funds. The proposed regulations would also expand the Department's authority to require financial protection when an institution starts to exhibit problems instead of waiting until it is too late to protect students and taxpayers. This proactive accountability would be buttressed by proposed changes to the way the Department certifies institutional participation in the title IV, HEA programs to ensure that it can monitor institutions more easily and effectively if they start to show signs of problems. The proposed approach would help the Department better target its oversight to institutions that exhibit a greater risk to students and taxpayers instead of simply allowing them to receive substantial sums of Federal resources with minimal scrutiny every year. By identifying additional indicators that an institution is not administratively capable of participating in the aid programs, the proposed regulations would enable the Department to step in and exert greater oversight and accountability over an institution before it is too late.

The proposed regulations would, therefore, strengthen accountability for postsecondary institutions and programs in several critical ways. All institutions would be required to provide students a link to access information about debt and earnings outcomes. Non-GE programs not meeting the D/E standards would need to have students acknowledge viewing this information before receiving aid, and career training programs failing either the D/E or EP metrics would need to warn students about the possibility that they would lose eligibility for federal aid. Some institutions would have to improve their offerings or lose access to Federal aid. Concerning behavior would be more likely to result in required financial protection or other forms of oversight. As a result, students and taxpayers would have greater assurances that their money is spent at institutions that deliver value and merit Federal support.

The Financial Value Transparency and GE provisions in subparts Q and S of the proposed regulations are intended to address the problem that many programs are not delivering sufficient financial value to students and taxpayers, and students and families often lack the information on the financial consequences of attending different programs needed to make informed decisions about where to attend. These issues are especially prevalent among programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation. Currently, many of these programs leave the typical graduate with unaffordable levels of loan debt in relation to their income, earnings that are no greater than what they would reasonably expect to receive if they had not attended the program, or both.

Through this regulatory action, the Department proposes to establish: (1) A

Financial Value Transparency framework that would increase the quality, availability, and salience of information about the outcomes of students enrolled in all title IV, HEA programs and (2) an accountability framework for GE programs that would define what it means to prepare students for gainful employment in a recognized occupation by establishing standards by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds. As noted in the preamble to this NPRM, there are different statutory grounds for the proposed transparency and accountability frameworks.

The transparency framework (subpart Q and § 668.43) would establish reporting and disclosure requirements that would increase the transparency of student outcomes for all programs. This would ensure that the most accurate and comparable information possible is disseminated to students, prospective students, and their families to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Institutions would be required to provide information about program characteristics, outcomes, and costs and the Department would assess a program's debt and earnings outcomes based on debt-to-earnings and earnings premium metrics, using information reported by institutions and information otherwise obtained by the Department. The proposed rule would seek to ensure information's salience to students by requiring that institutions provide current and prospective students with a link to view cost, debt, and earnings outcomes of their chosen program on the Department's website. For non-GE programs failing the debt-to-earnings metrics, the Department would require an acknowledgement that the enrolled or prospective student has viewed the information, prior to disbursing title IV, HEA funds. Further, the website would provide the public, taxpayers, and the Government with relevant information to help understand the outcomes of the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they can use to improve the outcomes for students and guide their decisions about program offerings.

The accountability framework (subpart S) would define what it means to prepare students for gainful employment by establishing standards that assess whether typical students leave programs with reasonable debt burdens and earn more than the typical worker who completed no more education than a high school diploma or equivalent. Programs that repeatedly fail to meet these criteria would lose eligibility to participate in title IV, HEA student aid programs.

Overview of Postsecondary Programs Supported by Title IV, HEA

Under subpart Q, we propose, among other things, to assess debt and earnings outcomes for students in all programs participating in Title IV, HEA programs, including both GE programs and eligible non-GE programs. Under subpart S, we propose, among other things, to establish title IV, HEA eligibility requirements for GE programs. In assessing the need for these regulatory actions, the Department analyzed program performance. The Department's analysis of program performance is based on data assembled for all title IV, HEA postsecondary programs operating as of March 2022 that also had completions reported in the 2015–16 and 2016–17 award years. This data, referred to as the ''2022 Program Performance Data (2022 PPD),'' is described in detail in the ''Data Used in this RIA'' section below, though we draw on it in this section to describe outcome differences across programs.

Table 1.1 reports the number of programs and average title IV, HEA enrollment for all institutions in our data for AY 2016 and 2017. Throughout this RIA, we provide analysis separately for programs that would be affected only by subpart Q (eligible non-GE programs) and those that would additionally be affected by subpart S (GE programs).

TABLE 1.1—COMBINED NUMBER OF TITLE IV ELIGIBLE PROGRAMS AND TITLE IV ENROLLMENT BY CONTROL AND CREDENTIAL LEVEL COMBINING GE AND NON-GE

	Number of	
	Programs	Enrollees
Public:		
UG Certificates	18,971	869,600
Associate's	27,312	5,496,800
Bachelor's	24,338	5,800,700
Post-BA Certs	872	12,600
Master's	14,582	760,500
Doctoral	5,724	145,200
Professional	568	127,500
Grad Certs	1,939	41,900
Total	94,306	13,254,700
Private, Nonprofit:		
UG Certificates	1,387	77,900
Associate's	2,321	266,900
Bachelor's	29,752	2,651,300
Post-BA Certs	629	7,900
Master's	10,362	796,100
Doctoral	2,854	142,900
Professional	493	130,400
Grad Certs	1,397	35,700
Total	49,195	4,109,300
Proprietary:		
UG Certificates	3,218	549,900
Associate's	1,720	326,800
Bachelor's	963	675,800

TABLE 1.1—COMBINED NUMBER OF TITLE IV ELIGIBLE PROGRAMS AND TITLE IV ENROLLMENT BY CONTROL AND CREDENTIAL LEVEL COMBINING GE AND NON-GE—Continued

	Number of	
	Programs	Enrollees
Post-BA Certs	52	800
Master's	478	240,000
Doctoral	122	54,000
Professional	32	12,100
Grad Certs	128	10,800
Total	6,713	1,870,100
Foreign Private:		
UG Certificates	28	100
Associate's	18	100
Bachelor's	1,228	5,500
Post-BA Certs	27	<50
Master's	3,075	9,000
Doctoral	793	2,800
Professional	104	1,500
Grad Certs	77	1,500
Total	5,350	20,400
Foreign For-Profit:		
UG Certificates	1	<50
Master's	6	200
Doctoral	4	1,900
Professional	7	11,600
Total	18	13,700
Total:		
UG Certificates	23,605	1,497,500
Associate's	31,371	6,090,700
Bachelor's	56,281	9,133,200
Post-BA Certs	1,580	21,400
Master's	28,503	1,805,800
Doctoral	9,497	346,800
Professional	1,204	283,100
Grad Certs	3,541	89,900
Total	155,582	19,268,200

Note: Counts are rounded to the nearest 100.

There are 123,524 degree programs at public or private non-profit institutions (hereafter, ''eligible non-GE programs'' or just ''non-GE programs'') in the 2022 PPD that would be subject to the proposed transparency regulations in subpart Q but not the GE regulations in subpart S. These programs served approximately 16.3 million students annually who received title IV, HEA aid, totaling $25 billion in grants and $61 billion in loans. Table 1.2 displays the number of non-GE programs by two-digit CIP code, credential level, and institutional control in the 2022 PPD. Two-digit CIP codes aggregate programs by broad subject area. Table 1.3 displays enrollment of students receiving title IV, HEA program funds in non-GE programs in the same categories.

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Table 1.2 - Number of non-GE Programs by CIP2, Credential Level, and Control

	Public					Private, Nonprofit					Foreign					Total
	Assoc	Bach	Mast	Doct	Prof	Assoc	Bach	Mast	Doct	Prof	Assoc	Bach	Mast	Doct	Prof	Total
1: Agriculture & Related Sciences	693	507	267	143	1	20	95	14	5			10	27	6		1,788
3: Natural Resources & Conservation	260	433	219	114	2	10	445	67	8			12	80	9		1,659
4: Architecture & Related Services	91	216	224	43	6	4	102	117	13	4		14	54	12	2	902
5: Area, Ethnic, Cultural, Gender Studies	54	366	125	58	2	3	413	55	25			11	70	20		1,238
9: Communication	460	807	301	75	2	28	1,221	216	20		1	61	102	6		3,300
10: Communications Tech	312	63	9			10	97	16				6	7			520
11: Computer & Information Sciences & Support Services	1,986	857	460	126	1	127	1,051	297	59	2	1	36	59	11		5,073
12: Personal & Culinary Services	539	20				27	21	2					2			611
13: Education	975	1,158	2,204	641	36	94	1,725	2,103	299	25	1	32	111	29	5	9,438
14: Engineering	516	1,556	1,243	719	15	12	833	524	271			70	86	33	1	5,879
15: Engineering Tech	2,375	563	164	13		98	136	89	7	1		6	25	2		3,479
16: Foreign Languages	286	950	332	167	5	4	1,149	102	93	1		39	91	26		3,254
19: Family & Consumer Sciences/Human Sciences	586	368	182	59	2	13	178	48	12	1		6	24	1	1	1,481
22: Legal Professions & Studies	437	98	81	18	97	44	158	107	42	114	1	36	94	17	29	1,373
23: English Language	262	645	451	121	4	10	1,063	208	57			57	130	57	3	3,068
24: Liberal Arts	1,035	438	120	11	5	265	661	114	9	2		52	43	17	1	2,773
25: Library Science	33	7	57	12	2		2	16	2	1		1	14	2		149
26: Biological & Biomedical Sciences	370	1,223	894	793	15	28	1,678	389	349	7		75	171	58		6,049
27: Mathematics & Statistics	243	660	432	192	2	5	556	135	51	1		15	30	11		2,663
28: Military Science		5	1				2	1				1	3			13
9: Military Tech	8	2	3			1	9	9					1			33
30: Multi/Interdisc. Studies	440	716	372	115	6	33	1,023	259	52	4	2	45	139	27	1	2,234
31: Parks & Rec	341	474	253	53	3	18	571	103	6		1	9	21	6		1,659
32: Basic Skills & Developmental/Remedial Education	18	1	2			1										22
33: Citizenship Activities							1						2			3
34: Health-Related Knowledge & Skills	4	3				1	4	1				1	14	2	1	30
35: Interpersonal & Social Skills							1						1			2
36: Leisure & Recreational Activities	12	10	3			1	21	1				7	22	6		83
37: Personal Awareness & Self-Improvement								1								1
38: Philosophy & Religious Studies	76	435	117	72	1	20	980	161	80	8		17	43	26	1	2,037
39: Theology & Religious Vocations	2	1				144	861	567	157	60	3	16	42	26	1	1,890
40: Physical Sciences	440	1,262	604	418	3	10	1,232	176	167		1	33	67	41	1	4,455
41: Science Tech./Technician	171	11	7	1		3	9	1				7	15	5		230
42: Psychology	259	884	477	257	8	36	1,053	424	189	13		61	127	34	3	3,825
43: Homeland Security	1,253	392	195	25		106	476	161	4			2	20	3	1	2,638
44: Public Admin & Social Services	375	474	495	111	8	40	809	254	45	4		6	73	7	2	2,403
45: Social Sciences	734	2,092	826	400	13	27	2,391	276	158	4	1	142	385	122	3	7,573
46: Construction Trades	464	11	1			21	4						3	1		505
47: Mechanic & Repair Techn/Technicians	1,059	19				41	8									1,127
48: Precision Production	433	2	1			13	5	2								456
49: Transportation & Materials Moving	114	57	7	1		10	35	5	2				1	2		234
50: Visual & Performing Arts	1,442	1,746	637	144	8	83	2,585	393	69	1	2	128	225	54	1	7,518
51: Health Professions & Related Programs	4,288	1,929	1,407	575	299	486	1,794	1,306	406	216	3	45	168	41	44	13,007
52: Business	3,669	2,635	1,131	143	18	415	3,556	1,554	109	24	1	129	387	25	3	13,852
53: High School/Secondary Diplomas	1	1					2	1								5
54: History	165	480	271	103	3	9	737	83	48			40	90	46	1	2,076
60: Residency Programs	1		4	1	1			1					6	2		16

Table 1.3 - Title IV Enrollment of non-GE Programs by CIP2, Credential Level, and Control

	Public					Private, Nonprofit					Foreign					Total
	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	
1: Agriculture & Related Sciences	24,100	65,500	5,300	1,300	<50	700	5,200	200	<50			<50	100	<50		102,500
3: Natural Resources & Conservation	10,200	50,800	5,300	1,400	<50	300	15,700	2,200	200			100	100	<50		86,300
4: Architecture & Relate	5,400	24,000	8,400	500	300	100	7,700	4,300	100	100		<50	100	<50	<50	51,000
5: Area, Ethnic, Cultural, Gender, & Group Studies	2,700	21,100	2,100	900	<50	<50	7,700	1,100	600			<50	200	<50		36,500
9: Communication	40,900	228,200	8,400	1,500	<50	500	91,800	9,700	300		<50	200	300	<50		381,800
10: Communications Tech	22,200	7,600	100			300	7,600	500				<50	<50			38,400
11: Computer & Info Science	200,300	210,200	18,000	1,500	200	10,000	89,200	14,400	700	<50	<50	100	100	<50		544,700
12: Personal & Culinary Services	47,900	1,000				9,700	6,900	100					<50			65,600
13: Education	140,600	318,400	195,800	29,700	1,800	4,500	147,400	175,600	27,500	1,900	0	100	200	100	<50	1,043,600
14: Engineering	73,900	352,200	26,400	8,100	100	300	85,200	10,500	3,100			200	100	<50	0	560,300
15: Engineering Tech	120,400	61,300	4,700	200		5,200	8,700	2,400	200	0		<50	<50	0		203,500
16: Foreign Languages	14,600	51,800	3,900	1,800	<50	100	20,900	1,000	700	<50		100	200	<50		95,100
19: Family & Consumer Sciences/Human Sciences	63,500	78,700	5,500	700	<50	1,900	16,900	2,500	100	<50		<50	100	<50	0	191,800
22: Legal Professions	33,700	13,200	2,700	3,900	30,900	2,900	7,200	5,400	9,200	48,200	0	100	200	<50	100	157,900
23: English Language	26,500	110,700	11,200	3,800	<50	100	45,800	8,400	1,000			200	300	100	<50	208,200
24: Liberal Arts	2,048,400	549,800	9,300	300	100	44,600	263,200	4,900	200	<50		900	400	100	<50	2,922,000
25: Library Science	900	300	11,000	100	100		<50	2,000	<50	100		<50	100	<50		14,600
26: Biological & Biomedical Sciences	94,700	419,700	17,400	11,000	100	800	163,100	11,000	5,100	200		200	400	100		724,000
27: Mathematics & Statistics	21,500	62,500	6,300	2,200	<50	<50	24,800	1,400	500	<50		<50	<50	<50		119,200
28: Military Science		<50	<50				<50	<50				<50	<50			100
29: Military Tech	2,700	500	<50			<50	900	700					<50			4,800
30: Multi/Interdisc Studies	147,300	185,400	10,400	1,600	<50	1,500	48,300	7,300	1,100	<50	<50	200	500	100	<50	403,800
31: Parks & Rec	43,100	170,200	12,300	1,000	<50	1,100	64,300	7,500	300		<50	<50	100	<50		300,000
32: Basic Skills & Developmental	400	<50	200			100										600
33: Citizenship Activities							<50						<50			<50
34: Health-Related Knowledge & Skills	700	500				<50	100	<50				<50	<50	<50	<50	1,400
35: Interpersonal & Social Skills							<50						<50			<50
36: Leisure & Recreational Activities	600	700	<50			<50	700	<50				<50	<50	<50		2,100
37: Personal Awareness & Self-Improvement								<50								<50
38: Philosophy & Religious Studies	2,100	18,400	1,100	1,000	<50	2,100	23,600	3,100	1,600	100		<50	100	100	<50	53,200
39: Theology & Religious Vocations	<50	<50				5,700	51,800	38,100	4,500	2,300	<50	100	100	100	<50	102,800
40: Physical Sciences	44,300	114,300	7,000	7,500	<50	100	23,700	1,100	2,500		0	100	100	100	<50	210,700
41: Science Technologies	16,300	1,500	100	<50		100	400	<50				<50	<50	<50		18,500
42: Psychology	81,000	330,000	24,900	9,700	100	3,100	157,300	49,200	16,100	500		300	300	100	<50	672,500
43: Homeland Security	218,200	167,500	13,100	500		12,500	84,800	12,000	100			<50	<50	<50	<50	508,700
44: Public Admin & Social Services	53,800	100,500	66,200	2,200	900	5,500	49,700	45,500	1,000	500		<50	100	<50	<50	326,100
45: Social Sciences	82,800	320,200	15,500	7,400	200	300	125,700	11,900	2,300	<50	0	800	1,700	300	<50	569,200
46: Construction Trades	18,300	1,100	<50			1,000	100						<50	<50		20,500
47: Mechanic & Repair Technologies	71,000	700				7,700	1,200									80,700
48: Precision Production	23,700	<50	<50			600	100	<50								24,400
49: Transportation	6,900	11,900	300	<50		1,300	9,800	1,400	<50				<50	<50		31,700
50: Visual & Perf. Arts	118,600	215,900	14,300	3,400	<50	3,000	137,400	12,800	1,100	<50	<50	600	900	100	<50	508,200
51: Health Professions & Related Programs	902,300	591,600	123,300	37,800	91,500	95,700	328,300	154,900	54,800	75,400	<50	200	600	1,000	1,400	2,461,800
52: Business	641,600	876,800	124,200	2,000	1,000	40,500	490,100	190,400	6,700	1,100	0	600	1,200	<50	<50	2,376,100
53: High School/Secondary Diplomas	<50	1,600					<50	<50								1,600
54: History	9,000	63,800	5,900	2,200	<50	100	25,700	2,400	1,000			100	300	100	0	110,500
60: Residency Programs	0		<50	<50	<50			<50					<50	<50		100

Note: Counts rounded to the nearest 100.

GE programs are non-degree programs, including diploma and certificate programs, at public and private non-profit institutions and nearly all educational programs at for-profit institutions of higher education regardless of program length or credential level.[156] Common GE programs provide training for occupations in fields such as cosmetology, business administration, medical assisting, dental assisting, nursing, and massage therapy. There were 32,058 GE programs in the 2022 PPD.[157] About two-thirds of these programs are at public institutions, 11 percent at private non-profit institutions, and 21 percent at for-profit institutions. These programs annually served approximately 2.9 million students who received title IV, HEA aid in AY 2016 or 2017. The Federal investment in students attending GE programs is significant. In AY 2022, these students received approximately $5 billion in Federal Pell grant funding and approximately $11 billion in Federal student loans. Table 1.4 displays the number of GE programs grouped by two-digit CIP code, credential level, and institutional control in the 2022 PPD. Table 1.5 displays enrollment of students receiving title IV, HEA program funds in GE programs in the same categories.

Table 1.4 – Number of GE Programs by CIP2, Credential Level, and Control

	Public			Private, Nonprofit			Proprietary								
	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Assoc.	Bach.	Post-BA Cert	Master's	Doct.	Prof.	Grad Cert	Total
1: Agriculture & Related Sciences	375	4	3	7		2	11	4	1	1					408
3: Natural Resources & Conservation	91	10	21	8	1	2	2		5	1	1			1	143
4: Architecture & Related Services	29	10	10	4	1	8	1		4		3		2		72
5: Area, Ethnic, Cultural, Gender, & Group Studies	61	14	42	14	4	12	1								148
9: Communication	171	12	38	25	7	16	14	14	25		9			1	332
10: Communications Tech	272	2	2	3	3	3	24	23	24	1	3				360
11: Computer & Information Sciences & Support Services	1,479	28	64	51	31	36	140	168	110	1	41	4		8	2,161
12: Personal & Culinary Services	788	2	2	34	1		900	79	11	4	6	3	4	7	1,841
13: Education	461	222	494	62	134	406	35	20	33	8	63	23	1	29	1,991
14: Engineering	98	31	62	10	6	33	4	5	10		5				264
15: Engineering Tech	1,453	5	21	34	4	4	84	71	21	1	4			1	1,703
16: Foreign Languages	205	15	9	37	5	3			2						276
19: Family & Consumer Sciences/Human Sciences	530	7	23	18	5	7	10	8	11	1	2	1		2	625
22: Legal Professions & Studies	285	18	15	35	15	26	36	66	24	4	5	1	8		538
23: English Language	79	18	35	13	5	6	11	5	11		2				185
24: Liberal Arts	329	15	22	22	18	19	1	10	12		2	1			451
25: Library Science	22	7	16		1	5			1						52
26: Biological & Biomedical Sciences	69	22	61	22	14	25	2	1	8		1	2		1	228
27: Mathematics & Statistics	18	12	26	10	2	3			2						73
28: Military Science			1				1	1	1					1	5
29: Military Tech	6		1	1		3	1	2	1		1				16
30: Multi/Interdisciplinary Studies	156	51	105	26	23	36	5	4	14	2	6			5	433
31: Parks & Rec	145	7	15	14	3	9	25	25	8		2	1		1	255
32: Basic Skills & Developmental/Remedial Education	26			4		1	7				1				39
33: Citizenship Activities	1														1
34: Health-Related Knowledge & Skills	4		3	1		2	5								15
35: Interpersonal & Social Skills						1									1
36: Leisure & Recreational Activities	5			2			1				1				9
37: Personal Awareness & Self-Improvement	1	1	1												3
38: Philosophy & Religious Studies	15	1	7	23	6	7			3		1				63
39: Theology & Religious Vocations	1			60	49	50		1	5		7	1	1		175
40: Physical Sciences	41	7	16	15		5	1	1	3						89
41: Science Technologies/Technicians	75	2	3	1	1		1	1							84
42: Psychology	38	23	74	19	20	59		2	14	2	19	15		7	292
43: Homeland Security	747	15	32	42	8	30	31	74	58	1	23	4		6	1,071
44: Public Admin & Social Services	161	28	59	17	6	28	3	5	14	1	19	7		4	352
45: Social Sciences	164	30	79	44	11	29		1	15		5	1			379
46: Construction Trades	840			28		1	62	14							945
47: Mechanic & Repair Technologies/Technicians	1,469	1	1	42			188	65	1						1,767
48: Precision Production	751			18			51	13							833
49: Transportation & Materials Moving	187	2	2	11			32	5			1				240
50: Visual & Performing Arts	540	16	48	75	29	36	65	85	98	1	26		1	1	1,021
51: Health Professions & Related Programs	4,025	124	327	386	132	274	1,261	637	174	8	101	35	11	25	7,520
52: Business	2,733	100	189	140	83	208	198	308	233	15	117	23	4	27	4,378
53: High School/Secondary Diplomas	4						1	1							6
54: History	18	9	7	8			1	1	6		1			1	52
60: Residency Programs	3	1	3	1	1	2	2								13

Note: Foreign institutions omitted because all cells are suppressed or empty.

[156] "For-profit" and "proprietary" are used interchangeably throughout the text. Foreign schools are schools located outside of the United States at which eligible U.S. students can use federal student aid.

[157] Note that the 2022 PPD will differ from the universe of programs that are subject to the proposed GE regulations for the reasons described in more detail in the "Data Used in this RIA" section, including that the 2022 PPD includes programs defined by four-digit CIP code while the rule would define programs by six-digit CIP code.

Table 1.5 - Title IV Enrollment of GE Programs by CIP2, Credential Level, and Control

	Public			Private, Nonprofit			Proprietary								Total
	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Assoc.	Bach.	Post-BA Cert	Master's	Doct.	Prof.	Grad Cert	
1: Agriculture & Related	5,600	<50	<50	200		<50	300	<50	<50	<50					6,200
3: Natural Resources & Conservation	1,200	<50	200	100	<50	<50	100		4,400	<50	400			<50	6,400
4: Architecture & Related	600	<50	<50	<50	<50	<50	<50		600		200		300		1,700
5: Area, Ethnic, Cultural, Gender, & Group Studies	800	100	300	100	100	100	<50								1,500
9: Communication	3,700	100	400	300	<50	200	3,300	400	6,700		800			<50	15,800
10: Communications Tech	4,700	<50	<50	<50	<50	<50	3,200	2,700	7,300	<50	200				18,200
11: Computer & Info Sciences	34,500	200	1,100	1,200	300	500	8,900	20,500	52,500	<50	6,400	800		300	127,100
12: Personal & Culinary Services	31,000	<50	<50	3,200	<50		176,800	7,600	1,100	<50	200	<50	<50	100	220,100
13: Education	16,100	4,500	16,000	1,700	2,400	14,100	800	6,700	33,500	100	37,000	15,800	1,100	2,100	152,000
14: Engineering	8,600	200	500	300	<50	200	200	500	1,500		100				11,900
15: Engineering Tech	22,500	<50	300	1,100	<50	<50	14,500	6,300	8,000	<50	1,400			<50	54,100
16: Foreign Languages	4,600	<50	<50	400	<50	<50			300						5,400
19: Family & Consumer Sciences/Human Sciences	22,100	<50	200	500	100	100	600	2,100	4,500	<50	1,000	300		100	31,600
22: Legal Professions	7,100	500	400	900	400	800	1,200	6,700	2,200	200	400	<50	1,700		22,600
23: English Language	3,900	100	300	1,600	100	<50	4,300	700	4,300		300				15,700
24: Liberal Arts	139,500	500	3,000	1,400	500	600	<50	2,300	3,800		200	100			151,900
25: Library Science	300	100	400		<50	100			300						1,100
26: Biological & Biomedical Sciences	2,700	100	600	300	100	200	<50	<50	2,700		<50	<50		<50	6,900
27: Mathematics & Statistics	400	200	100	100	<50	<50			400						1,300
28: Military Science			<50				<50	<50	200					0	200
29: Military Tech	100		<50	<50		100	<50	200	100		<50				400
30: Multi/Interdisc. Studies	14,100	700	1,600	500	500	500	100	3,500	25,000	<50	1,200			300	48,100
31: Parks & Rec	4,000	<50	200	500	<50	100	800	1,600	5,700		500	<50		<50	13,400
32: Basic Skills & Developmental	600			<50		<50	500				<50				1,100
33: Citizenship Activities	<50														<50
34: Health-Related Knowledge & Skills	100		<50	0		<50	100								200
35: Interpersonal & Social Skills						0									0
36: Leisure & Recreational Activities	200			<50			<50				<50				300
37: Personal Awareness & Self-Improvement	100	<50	500												600
38: Philosophy & Religious Studies	200	<50	<50	200	<50	200			500		100				1,200
39: Theology & Religious Vocations	<50			2,300	200	1,700		<50	3,200		900	300	300		8,900
40: Physical Sciences	900	<50	100	100		<50	0	<50	<50						1,200
41: Science Technologies	2,200	<50	<50	<50	<50		100	100							2,400
42: Psychology	2,700	300	1,400	400	200	2,200		<50	20,300	<50	17,800	10,100		2,200	57,500
43: Homeland Security	33,400	200	600	1,200	100	300	2,300	21,400	60,100	0	7,000	700		200	127,500
44: Public Admin & Social Services	6,500	700	800	100	100	400	200	4,300	22,500	<50	10,100	4,400		100	50,100
45: Social Sciences	3,200	400	700	500	100	500		<50	6,100		1,400	700			13,600
46: Construction Trades	18,000			1,800		<50	8,300	900							28,900
47: Mechanic & Repair Technologies	48,800	0	<50	4,100			59,200	10,400	<50						122,600
48: Precision Production	34,100			2,500			13,000	1,000							50,700
49: Transportation	4,900	<50	<50	700			9,500	200			<50				15,300
50: Visual & Performing Arts	15,000	100	300	2,100	200	400	2,600	7,700	29,700	0	3,100		<50	<50	61,200
51: Health Professions & Related Programs	275,000	1,800	7,400	43,100	1,900	7,800	229,100	148,200	139,600	<50	74,200	11,700	8,800	2,200	950,700
52: Business	95,500	1,700	4,300	4,100	700	4,500	9,800	70,500	226,500	400	74,200	9,200	100	2,900	504,200
53: High School/Secondary Diplomas	<50						<50	<50							100
54: History	400	<50	<50	100			0	200	2,200		900			100	3,900
60: Residency Programs	<50	<50	100	<50	<50	<50	100								300

Note: Foreign institutions omitted because all cells are suppressed or empty.

Note: Counts rounded to the nearest 100.

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Tables 1.6 and 1.7 show the student characteristics of title IV, HEA students in non-GE and GE programs, respectively, by institutional control, predominant degree of the institution, and credential level. In all three types of control, the majority of students served by the programs are female students. At public non-GE programs, 58 percent of students received a Pell Grant, 31 percent are 24 years or older, 36 percent are independent, and 43 percent non-white. At not-for-profit non-GE programs, 43 percent of students received a Pell Grant, 37 percent are 24 years or older, 44 percent are independent, and 43 percent are non-white. The average public GE program has 68 percent of its students ever received Pell, 44 percent are 24 years or older, 50 percent are independent, and 46 percent are non-white. At for-profit GE programs, 67 percent of students received a Pell Grant, 66 percent are 24 years or older, 72 percent are independent, and 59 percent are non-white.

TABLE 1.6—CHARACTERISTICS OF NON-GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL (ENROLLMENT-WEIGHTED)

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
Public:						
Less-Than 2-Year:						
Associate's	5,700	36.4	37.2	73.8	41.8	41.7
Bachelor's	10,600	59.4	40.6	54.0	37.4	62.6
Master's	8,700	71.8	34.7	36.1	27.7	81.5
2-Year:						
Associate's	5,800	29.6	37.5	74.1	49.3	34.8
Bachelor's	9,300	48.3	41.3	69.4	40.3	55.6
Master's	7,600	79.6	37.4	52.2	63.7	90.9
Professional	5,800	100.0	33.3	33.3	....	100.0
4-Year or Above:						
Associate's	7,600	36.5	37.8	67.0	39.7	42.2
Bachelor's	16,600	24.0	43.3	47.3	39.8	27.0
Master's	11,900	60.6	35.9	32.9	40.2	72.7

TABLE 1.6—CHARACTERISTICS OF NON-GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL (ENROLLMENT-WEIGHTED)—Continued

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
Doctoral	10,400	69.9	41.4	28.0	44.1	84.1
Professional	7,800	55.7	48.4	10.8	37.1	91.7
Total:						
Total	11,300	30.5	40.2	57.8	43.2	35.6
Private, Nonprofit:						
Less-Than 2-Year:						
Associate's	2,600	64.6	33.8	89.7	65.9	74.8
Bachelor's	9,100	65.8	37.1	67.0	62.6	70.0
Master's	9,200	52.2	30.7	37.7	56.3	61.4
Doctoral	5,500	24.7	14.6	32.1	41.2	58.5
Professional	4,600	52.0	54.6	1.9	39.6	97.1
2-Year:						
Associate's	6,300	47.4	34.8	72.4	52.2	53.6
Bachelor's	8,300	60.7	40.7	68.3	51.4	64.8
Master's	9,600	86.5	34.0	28.9	69.9	89.2
Doctoral	9,600	81.3	26.4	14.6	62.5	100.0
4-Year or Above:						
Associate's	6,800	54.9	34.6	70.2	49.3	60.5
Bachelor's	17,600	23.2	39.9	48.9	40.2	26.1
Master's	13,100	67.3	35.3	25.0	45.9	78.0
Doctoral	12,200	69.4	41.1	17.7	49.7	87.1
Professional	9,200	57.2	48.8	10.1	43.0	89.1
Total:						
Total	15,400	37.3	39.0	43.3	42.6	43.5

Note: Average EFC values rounded to the nearest 100. Credential levels with very few programs and most table elements missing are suppressed.

TABLE 1.7—CHARACTERISTICS OF GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
Public:						
Less-Than 2-Year:						
UG Certificates	4,500	45.5	37.5	76.5	42.4	53.1
Post-BA Certs	6,300	75.9	30.4	57.9	....	78.2
Grad Certs	8,100	57.1	16.7	57.5	32.1	65.2
2-Year:						
UG Certificates	6,100	41.9	37.8	70.3	50.9	46.8
Post-BA Certs	10,800	47.2	23.7	58.4	....	59.5
Grad Certs	7,600	89.7	68.1	68.9	50.6	89.7
4-Year or Above:						
UG Certificates	23,300	28.5	41.6	36.8	32.3	31.8
Post-BA Certs	11,500	60.5	31.6	35.9	....	71.3
Grad Certs	10,700	69.8	30.1	39.2	36.2	79.0
Total:						
Total	7,100	43.7	37.6	68.3	45.7	49.8
Private, Nonprofit:						
Less-Than 2-Year:						
UG Certificates	4,900	48.3	36.6	80.2	63.7	58.3
Post-BA Certs	15,600	51.0	59.2	3.3	....	65.3
Grad Certs	7,600	28.2	38.7	3.1	47.2	62.1
2-Year:						
UG Certificates	3,300	61.0	21.1	83.2	56.3	73.8
Post-BA Certs	10,100	94.8	28.4	53.7	....	94.8
Grad Certs	26,700	89.5	10.5	19.3	100.0	100.0
4-Year or Above:						
UG Certificates	10,500	37.4	35.8	66.4	65.8	42.1
Post-BA Certs	14,200	60.1	31.8	36.0	....	68.5
Grad Certs	11,500	70.8	32.8	29.8	44.5	80.3
Total:						
Total	8,300	55.1	32.3	60.6	57.3	64.2
Proprietary:						
Less-Than 2-Year:						
UG Certificates	3,900	45.7	31.5	82.4	63.0	56.5
Associate's	5,900	56.6	32.2	80.6	63.2	63.7
Bachelor's	4,200	54.2	36.9	86.5	83.3	57.3

TABLE 1.7—CHARACTERISTICS OF GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL—Continued

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
Post-BA Certs	9,100	70.7	44.7	36.8	....	77.2
Master's	9,200	85.4	26.7	32.2	62.1	90.4
Doctoral	9,800	98.6	19.2	32.0	47.6	99.7
Professional	14,100	84.7	19.5	30.5	54.2	100.0
Grad Certs	6,200	64.6	7.7	63.9	6.6	67.4
2-Year:						
UG Certificates	4,800	48.4	39.8	77.8	64.2	57.1
Associate's	5,700	51.8	33.3	77.8	60.6	58.1
Bachelor's	7,900	61.6	42.7	70.5	65.0	67.9
Post-BA Certs	13,400	86.4	25.0	39.4	....	86.4
Master's	7,100	82.3	42.1	31.0	65.1	89.5
Doctoral	0	0.0	0.0	100.0	....	0.0
Professional	5,700	71.6	46.0	14.6	36.7	99.0
Grad Certs	3,700	64.8	32.4	0.0	24.3	67.6
4-Year or Above:						
UG Certificates	5,400	77.7	22.1	76.2	55.4	84.3
Associate's	5,400	75.4	31.9	76.1	57.2	82.7
Bachelor's	9,700	75.2	40.7	64.2	54.6	78.8
Post-BA Certs	7,500	84.6	28.5	54.7	....	92.3
Master's	11,300	82.3	30.2	38.8	58.0	85.8
Doctoral	19,800	92.9	30.0	25.2	57.9	95.2
Professional	7,100	89.0	25.7	47.1	34.1	93.2
Grad Certs	11,900	88.6	27.1	38.2	63.2	90.7
Total:						
Total	7,700	66.1	34.7	67.3	58.8	72.4

Note: EFC values rounded to the nearest 100.

Outcome Differences Across Programs

A large body of research provides strong evidence of the many significant benefits that postsecondary education and training provides, both private and social. Private pecuniary benefits include higher wages and lower risk of unemployment.[158] Increased educational attainment also provides private nonpecuniary benefits, such as better health, job satisfaction, and overall happiness.[159] Social benefits of increases in the number of individuals with a postsecondary education include productivity spillovers from a better educated and more flexible workforce,[160] increased civic participation,[161] and improvements in health and well-being for the next generation.[162] Improved productivity and earnings increase tax revenues from higher earnings and lower rates of reliance on social safety net programs. Even though the costs of postsecondary education have risen, there is evidence that the average financial returns to graduates have also increased.[163]

However, there is also substantial heterogeneity in earnings and other outcomes for students who graduate from different types of institutions and programs. Table 1.8 shows the enrollment-weighted average borrowing and default by control and credential level. Mean borrowing amounts are for title IV recipients who completed their program in AY 2016 or 2017, with students who did not borrow counting as having borrowed $0. For borrowing, our measure is the average for each institutional control type and credential level combination of program average debt. For default, our measure is, among borrowers (regardless of completion status) who entered repayment in 2017, the fraction of borrowers who have ever defaulted three years later. The cohort default rate measure follows the methodology for the official institutional cohort default rate measures calculated by the Department, except done at the program level. Though average debt tends to be higher for higher-level credential programs, default rates tend to be lower. At the undergraduate level, average debt is much lower for public programs than private non-profit and for-profit programs and default rates are lower for public and non-profit programs than those at for-profit institutions.

TABLE 1.8—AVERAGE DEBT AND COHORT DEFAULT RATE, BY CONTROL AND CREDENTIAL LEVEL (ENROLLMENT-WEIGHTED)

	Average debt	Cohort default rate
Public:		

[158] Barrow, L., & Malamud, O. (2015). Is College a Worthwhile Investment? *Annual Review of Economics,* 7(1), 519–555.

Card, D. (1999). The causal effect of education on earnings. *Handbook of labor economics,* 3, 1801–1863.

[159] Oreopoulos, P., & Salvanes, K.G. (2011). Priceless: The Nonpecuniary Benefits of Schooling. *Journal of Economic Perspectives,* 25(1), 159–184.

[160] Moretti, E. (2004). Workers' Education, Spillovers, and Productivity: Evidence from Plant-Level Production Functions. *American Economic Review,* 94(3), 656–690.

[161] Dee, T.S. (2004). Are There Civic Returns to Education? *Journal of Public Economics,* 88(9–10), 1697–1720.

[162] Currie, J., & Moretti, E. (2003). Mother's Education and the Intergenerational Transmission of Human Capital: Evidence from College Openings. *The Quarterly Journal of Economics,* 118(4), 1495–1532.

[163] Avery, C., and Turner, S. (2013). Student Loans: Do College Students Borrow Too Much-Or Not Enough? *Journal of Economic Perspectives,* 26(1), 165–192.

TABLE 1.8—AVERAGE DEBT AND COHORT DEFAULT RATE, BY CONTROL AND CREDENTIAL LEVEL (ENROLLMENT-WEIGHTED)—Continued

	Average debt	Cohort default rate
UG Certificates	5,759	16.9
Associate's	5,932	17.4
Bachelor's	17,935	7.6
Post-BA Certs	7,352	2.3
Master's	29,222	2.9
Doctoral	71,102	2.9
Professional	124,481	0.8
Grad Certs	24,883	2.5
Private, Nonprofit:		
UG Certificates	9,367	12.0
Associate's	16,445	14.9
Bachelor's	20,267	7.3
Post-BA Certs	9,497	2.8
Master's	40,272	2.9
Doctoral	128,998	2.3
Professional	151,473	1.3
Grad Certs	40,732	2.4
Proprietary:		
UG Certificates	8,857	14.2
Associate's	18,766	15.3
Bachelor's	29,038	12.4
Post-BA Certs	15,790	16.9
Master's	39,507	4.1
Doctoral	99,422	4.4
Professional	96,836	0.7
Grad Certs	47,803	3.9
Foreign Private:		
UG Certificates	(*)	0.0
Associate's	(*)	(*)
Bachelor's	17,074	7.0
Post-BA Certs	(*)	(*)
Master's	40,432	2.0
Doctoral	22,600	3.5
Professional	247,269	3.1
Grad Certs	284,200	0.2
Foreign For-Profit:		
Master's	(*)	0.0
Doctoral	84,200	1.4
Professional	280,667	1.3

* Cell suppressed because it based on a population of fewer than 30.

Table 1.9 shows median earnings ($2019) for graduates (whether or not they borrow) along these same dimensions. Similar patterns hold for earnings, with lower earnings in proprietary programs than in public and non-profit programs for almost all types of credential level.

TABLE 1.9—ENROLLMENT-WEIGHTED AVERAGE OF PROGRAM MEDIAN EARNINGS 3 YEARS AFTER PROGRAM COMPLETION, BY CONTROL AND CREDENTIAL LEVEL

	Median earnings 3 years after completion
Public:	
UG Certificates	33,400
Associate's	34,400
Bachelor's	46,100
Post-BA Certs	45,600
Master's	66,600
Doctoral	83,500
Professional	91,300
Grad Certs	71,500
Private, Nonprofit:	
UG Certificates	26,200
Associate's	35,700
Bachelor's	48,800
Post-BA Certs	61,600
Master's	68,600
Doctoral	86,200

TABLE 1.9—ENROLLMENT-WEIGHTED AVERAGE OF PROGRAM MEDIAN EARNINGS 3 YEARS AFTER PROGRAM COMPLETION, BY CONTROL AND CREDENTIAL LEVEL—Continued

	Median earnings 3 years after completion
Professional	88,200
Grad Certs	74,800
Proprietary:	
UG Certificates	25,400
Associate's	34,600
Bachelor's	45,600
Post-BA Certs	43,500
Master's	59,300
Doctoral	78,000
Professional	49,200
Grad Certs	52,200
Foreign Private:	
UG Certificates	....
Associate's	....
Bachelor's	8,200
Post-BA Certs	....
Master's	38,600
Doctoral	....
Professional	88,400
Grad Certs	15,100
Foreign For-Profit:	
Master's	....
Doctoral	65,900
Professional	100,400

Note: Values rounded to the nearest 100.

A growing body of research, described below, shows that differences in institution and program quality are important contributors to the variation in borrowing and earnings outcomes described above. That is, differences in graduates' outcomes across programs are not fully (or primarily) explained by the characteristics of the students that attend. Differences in program quality—measured by the causal effect of attending the program on its students' outcomes—are important.[164] It is, therefore, important to provide students with this information and to hold programs accountable for poor student debt and earnings outcomes. Research reviewed below also shows that GE programs are the programs least likely to reliably provide an adequate return on investment, from the perspective of both the student and society. These findings imply that aggregate student outcomes—including their earnings and likelihood of positive borrowing outcomes—would be improved by limiting students enrollment in low-quality programs.

A recent study computed productivity—value-added per dollar of social investment—for 6,700 undergraduate programs across the United States.[165] Value-added in that study was measured using both private (individual earnings) and social (working in a public service job) notions of value. A main finding was that productivity varied widely even among institutions serving students of similar aptitude, especially at less selective institutions. That is, a dollar spent educating students does much more to increase lifetime earnings potential and public service at some programs than others. The author concludes that ''market forces alone may be too weak to discipline productivity among these schools.''

The finding of substantial variation in student outcomes across programs serving similar students or at similar types of institutions or in similar fields has been documented in many other more specific contexts. These include community colleges in California,[166] public two- and four-year programs in Texas,[167] master's degree programs in Ohio,[168] law and medical schools, and programs outside the United States.[169] Variation in institutional and program performance is a dominant feature of postsecondary education in the United States.[170]

[164] Black, Dan A., and Jeffrey A. Smith. ''Estimating the returns to college quality with multiple proxies for quality.'' *Journal of Labor Economics* 24.3 (2006): 701–728.

Cohodes, Sarah R., and Joshua S. Goodman. ''Merit aid, college quality, and college completion: Massachusetts' Adams scholarship as an in-kind subsidy.'' *American Economic Journal: Applied Economics* 6.4 (2014): 251–285.

Andrews, Rodney J., Jing Li, and Michael F. Lovenheim. ''Quantile treatment effects of college quality on earnings.'' *Journal of Human Resources* 51.1 (2016): 200–238.

Dillon, Eleanor Wiske, and Jeffrey Andrew Smith. ''The consequences of academic match between students and colleges.'' *Journal of Human Resources* 55.3 (2020): 767–808.

[165] Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education,* C.M. Hoxby and K.M. Stange(eds). University of Chicago Press: Chicago, 2019.

[166] Carrell, S.E. & M. Kurleander. 2019. Estimating the Productivity of Community Colleges in Paving the Road to Four-Year College Success. In *Productivity in Higher Education,* C.M. Hoxby and K.M. Stange(eds). University of Chicago Press: Chicago, 2019.

[167] Andrews, R.J., & Stange, K.M. (2019). Price regulation, price discrimination, and equality of opportunity in higher education: Evidence from Texas. *American Economic Journal: Economic Policy,* 11.4, 31–65.

Andrews, R.J., Imberman, S.A., Lovenheim, M.F. & Stange, K. M. (2022), ''The returns to college major choice: Average and distributional effects, career trajectories, and earnings variability,'' NBER Working Paper w30331.

[168] Minaya, V., Scott-Clayton, J. & Zhou, R.Y. (2022). Heterogeneity in Labor Market Returns to Master's Degrees: Evidence from Ohio. (EdWorkingPaper: 22–629). Retrieved from Annenberg Institute at Brown University: *doi.org/10.26300/akgd-9911.*

[169] Hastings, J.S., Neilson, C.A. & Zimmerman, S.D. (2013), ''Are some degrees worth more than others? Evidence from college admission cutoffs in Chile,'' NBER Working Paper w19241.

[170] A recent overview can be found in Lovenheim, M. and J. Smith. 2023. Returns to Different Postsecondary Investments: Institution Type, Academic Programs, and Credentials. In *Handbook of the Economics of Education Volume 6,* E.

Continued

The wide range of performance across programs and institutions means that prospective students face a daunting information problem. The questions of where to go and what to study are key life choices with major consequences. But without a way to discern the differences between institutions through comparable, reliably reported measures of quality, students may ultimately have to rely on crude signals about the caliber of education a school offers.

Recent evidence demonstrates that information about colleges, delivered in a timely and relevant way, can shape students' choices. Students at one large school district were 20 percent more likely to apply to colleges that have information listed on a popular college search tool, compared with colleges whose information is not displayed on the tool. A particularly important finding of the study is that for Black, Hispanic, and low-income students, access to information about local public four-year institutions increases overall attendance at such institutions. This, the author argues, suggests ''that students may have been unaware of these nearby and inexpensive options with high admissions rates.'' [171]

This evidence reveals both the power of information to shape student choices at critical moments in the decision process and how a patchwork of information about colleges maybe result in students missing out on opportunities. Given the variation in quality across programs apparent in the research evidence outlined above, these missed opportunities can be quite costly.

Unfortunately, the general availability of information does not always mean students are able to find and use it. Indeed, evidence on the initial impact of the Department's College Scorecard college comparison tool found minimal effects on students' college choices, with any possible effects concentrated among the highest achieving students.[172] But the contrast between these two pieces evidence, one where information affects college choices and one where it doesn't, is instructive: while students generally must seek out the College Scorecard during their college search process, the college search tool from the first study delivers information to students as they are taking other steps through the tool, from requesting transcripts and recommendation letters to submitting applications. And it tailors that information to the student, providing information about where other students from the same high school have gone to college and their outcomes there. Accordingly, there is some basis to believe that personalized information delivered directly to students at key decision points from a credible source can have an impact.

To that end, the transparency component of these regulations attempts not only to improve the quality of information available to students (by newly collecting key facts about colleges), but also its salience, relevance, and timing. Because this information would be delivered directly to students about the college for which they are finalizing their financial aid packages, students would be likely to see it and understand its credibility at a time when they are likely to find it useful for deciding. Better still, the information would not be ambiguous when the message is most critical: if a school is consistently failing to put graduates on better financial footing, students would receive a clear indication of that fact before they make a financial commitment.

Still, the market-disciplining role of accurate information does not always suffice. Such mechanisms may decrease, but not eliminate, the chance that students will make suboptimal choices. The Department has concluded that regulation beyond information provision alone is warranted due to evidence, reviewed below, that such regulations could reduce the risk that students and taxpayers put money toward programs that will leave them worse off. Program performance is particularly varied and problematic among the non-degree certificate programs offered by all types of institutions, as well as at proprietary degree programs. These are the places where concerns about quality are at their height, especially given the narrower career-focused nature of the credentials offered in this part of the system.

Certificate programs are intended to prepare students for specific vocations and have, on average, positive returns relative to not attending college at all. Yet this aggregate performance masks considerable variability: certificate program outcomes vary greatly across programs, States, fields of study, and institutions,[173] and even within the same narrow field and within the same institution.[174] Qualitative research suggests some of this outcome difference stems from factors that providers directly control, such as how they engage with industry and employers in program design and whether to incorporate opportunities for students to gain relevant workforce experience during the program.[175] Unfortunately, many of the most popular certificate programs do not result in returns on investment for students who complete the program. An analysis of programs included in the 2014 GE rule found that 10 of the 15 certificate programs with the most graduates have typical earnings of $18,000 or less, well below what a typical high school graduate would earn.[176]

The proposed GE rule would subject for-profit degree programs to the proposed transparency framework in § 668.43, the transparency framework in subpart Q, and the GE program-specific eligibility requirements in subpart S. This additional scrutiny, based in the requirements of the HEA, is warranted because for-profit programs have demonstrated particularly poor outcomes, as was shown in Tables 1.8 and 1.9 above. A large body of research provides causal evidence on the many ways students at for-profit colleges are at an economic disadvantage upon exiting their institutions. This research base includes studies showing that students who attend for-profit programs are significantly more likely to suffer from poor employment prospects,[177] low earnings,[178] and loan repayment

Hanushek, L. Woessmann, and S. Machin (Eds). New Holland.

[171] Mulhern, Christine. ''Changing college choices with personalized admissions information at scale: Evidence on Naviance.'' Journal of Labor Economics 39.1 (2021): 219–262.

[172] Hurwitz, Michael, and Jonathan Smith. ''Student responsiveness to earnings data in the College Scorecard.'' Economic Inquiry 56.2 (2018): 1220–1243.

[173] Aspen Institute. 2015. *From College to Jobs: Making Sense of Labor Market Returns to Higher Education.* Washington, DC. *www.aspeninstitute.org/publications/labormarketreturns/.*

[174] Much of the research is summarized in Ositelu, M.O., McCann, C. & Laitinen, A. 2021. The Short-term Credential Landscape. New America: Washington DC. *www.newamerica.org/education-policy/repoerts/the-short-term-credentials-landscape.*

[175] Soliz, A. 2016. *Preparing America's Labor Force: Workforce Development Programs in Public Community Colleges,* (Washington, DC: Brookings, December 9, 2016), *www.brookings.edu/research/preparing-americas-labor-force-workforce-development-programs-in-public-community-colleges/.*

[176] Aspen Institute. 2015. *From College to Jobs: Making Sense of Labor Market Returns to Higher Education.* Washington, DC. *www.aspeninstitute.org/publications/labormarketreturns.*

[177] Deming, D.J., Yuchtman, N., Abulafi, A., Goldin, C., & Katz, L.F. (2016). The Value of Postsecondary Credentials in the Labor Market: An Experimental Study. *American Economic Review,* 106(3), 778–806.

[178] Cellini, S.R. & Chaudhary, L. (2014). The Labor Market Returns to a For-Profit College

difficulties.[179] Students who transfer into for-profit institutions instead of public or nonprofit institutions face significant wage penalties.[180] In some cases, researchers find similar earnings or employment outcomes between for-profit and not-for-profit associate and bachelor degree programs.[181] However, students pay and borrow more to attend for-profit degree programs, on average.[182] That means their overall earnings return on investment is worse. This evidence of lackluster labor market outcomes accords with the growing evidence that many for-profit programs may not be preparing students for careers as well as comparable programs at public institutions. A 2011 GAO report found that, for nine out of 10 licensing exams in the largest fields of study, graduates of for-profit institutions had lower passage rates than graduates of public institutions.[183] This lack of preparation may not be surprising, as many for-profit institutions devote more resources to recruiting and marketing than to instruction or student support services. A 2012 investigation by the U.S. Senate Committee on Health, Education, Labor and Pensions (Senate HELP Committee) found that almost 23 percent of revenues at proprietary institutions were spent on marketing and recruiting but only 17 percent on instruction.[184] The report further found that at many institutions, the number of recruiters greatly outnumbered the career services and support services staff.

Particularly strong evidence comes from a recent study that found that the average undergraduate certificate-seeking student that attended a for-profit institution did not experience any earnings gains relative to the typical worker in a matched sample of high school graduates. They also had significantly lower earnings gains than students who attended certificate programs in the same field of study in public institutions.[185] Furthermore, the earnings gain for the average for-profit certificate-seeking student was not sufficient to compensate them for the amount of student debt taken on to attend the program.[186] At the same time, research also shows substantial variation in earnings gains from title IV, HEA-eligible undergraduate certificate programs by field of study,[187] with students graduating from cosmetology and personal services programs in all sectors experiencing especially poor outcomes.[188]

Consequences of Attending Low Financial Value Programs

Attending a postsecondary education or training program where the typical student takes on debt that exceeds their capacity to repay can cause substantial harm to borrowers. For instance, high debt may cause students to delay certain milestones; research shows that high levels of debt decreases students' long-term probability of marriage.[189] Being overburdened by student payments can also reduce the likelihood that borrowers will invest in their future. Research shows that when students borrow more due to high tuition, they are less likely to obtain a graduate degree [190] and less likely to take out a mortgage to purchase a home after leaving college.[191]

Unmanageable debt can also have adverse financial consequences for borrowers, including defaulting on their student loans. For those who do not complete a degree, more student debt may raise the probability of bankruptcy.[192] Borrowers who default on their loans face potentially serious repercussions. Many aspects of borrowers' lives may be affected, including their ability to sign up for utilities, obtain insurance, or rent an apartment.[193] The Department reports loans more than 90 days delinquent or in default to the major national credit bureaus, and being in default has been shown to be correlated with a 50-to-90-point drop in borrowers' credit scores.[194] A defaulted loan can remain on borrowers' credit reports for up to seven years and lead to higher costs that make insurance, housing, and other services and financial products less affordable and, in some cases, harm borrowers' ability to get a job.[195] Borrowers who default lose access to some repayment options and flexibilities. At the same time, their balances become due immediately, and their accounts become subject to involuntary collections such as wage garnishment and redirection of income tax refunds toward the outstanding loan.[196]

Research shows that borrowers who attend for-profit colleges have higher student loan default rates than students with similar characteristics who attend public institutions.[197] Furthermore, most of the rise in student loan default rates from 2000 to 2011 can be traced to increases in enrollment in for-profit institutions and, to a lesser extent, two-year public institutions.[198]

Low loan repayment also has consequences for taxpayers. Calculating the precise magnitude of these costs will require decades of realized repayment

Education. *Economics of Education Review,* 43, 125–140.

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[180] Liu, V. Y.T. & Belfield, C. (2020). The labor market returns to for-profit higher education: Evidence for transfer students. *Community College Review,* 48(2), 133–155.

[181] Lang, K., & Weinstein, R. (2013). The Wage Effects of Not-For-Profit and For-Profit Certifications: Better Data, Somewhat Different Results. *Labour Economics,* 24, 230–243.

[182] Cellini, S.R. & Darolia, R. (2015). College costs and financial constraints. In B. Hershbein & K. Hollenbeck (Ed.). *Student Loans and the Dynamics of Debt* (137–174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

Cellini, S.R., & Darolia, R. (2017). High Costs, Low Resources, and Missing Information: Explaining Student Borrowing in the For-Profit Sector. *The ANNALS of the American Academy of Political and Social Science,* 671(1), 92–112.

[183] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[184] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[185] Cellini, S.R., & Turner, N. (2019). Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students using Administrative Data. *Journal of Human Resources,* 54(2), 342–370.

[186] Ibid.

[187] Lang, K., & Weinstein, R. (2013). The Wage Effects of Not-For-Profit and For-Profit Certifications: Better Data, Somewhat Different Results. *Labour Economics,* 24, 230–243.

[188] Dadgar, M., & Trimble, M.J. (2015). Labor Market Returns to Sub-Baccalaureate Credentials: How Much Does a Community College Degree or Certificate Pay? *Educational Evaluation and Policy Analysis,* 37(4), 399–418.

[189] Gicheva, D. (2016). Student Loans or Marriage? A Look at the Highly Educated. *Economics of Education Review,* 53, 207–2016.

[190] Chakrabarti, R., Fos, V., Liberman, A. & Yannelis, C. (2020). Tuition, Debt, and Human Capital. Federal Reserve Bank of New York Staff Report No. 912.

[191] Mezza, A., Ringo, D., Sherlund, S., & Sommer, K. (2020). ''Student Loans and Homeownership,'' *Journal of Labor Economics,* 38(1): 215–260.

[192] Gicheva, D. & Thompson, J. (2015). The effects of student loans on long-term household financial stability. In B. Hershbein & K. Hollenbeck (Ed.). *Student Loans and the Dynamics of Debt* (137–174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

[193] *studentaid.gov/manage-loans/default.*

[194] Blagg, K. (2018). Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default. Urban Institute Research Report.

[195] Elliott, D. & Granetz Lowitz, R. (2018). What Is the Cost of Poor Credit? Urban Institute Report.

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[196] *studentaid.gov/manage-loans/default.*

[197] Deming, D., Goldin, C., & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

Hillman, N.W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education* 37(2), 169–195.

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periods for millions of borrowers. However, Table 1.10 shows estimates of the share of disbursed loans that will not be repaid based on simulated debt and earnings trajectories at each program in the 2022 PPD under the proposed income-driven repayment plan announced in January 2023.[199] These estimates incorporate the subsidy coming from the features of the repayment plan itself (capped payments, forgiveness), not accounting for default or delinquency. Starting with the median earnings and debt at each program, the Department simulated typical repayment trajectories for each program with data available for both measures.

Using U.S. Census Bureau (Census) microdata on earnings and family formation for a nationally representative sample of individuals, the Department projected the likely repayment experience of borrowers at each program assuming all were enrolled in the Proposed Revised Pay as You Earn (REPAYE) repayment plan (which can be found at 88 FR 1894).[200] Starting from the median earnings level of each program, the projections incorporate the estimated earnings growth over the life course through age sixty for individuals starting from the same earnings level in a given State. The projections also include likely spousal earnings, student debt, and family size of each borrower (also derived from the Census data), which makes it possible to calculate the total amount repaid by borrowers under each plan when paying in full each month (even if that means making a payment of $0). The simulation incorporates different demographic and income groups probabilistically due to important non-linearities in plan structure.

Table 1.10 shows that, among all programs, students that attend those that fall below the proposed debt-to-earnings standard are consistently projected to pay back less on their loans, in present value terms, than they took out.[201] This is true regardless of whether a program is in the public, private nonprofit, or proprietary sector. The projected repayment ratio is even lower for programs that only fail the EP measure because at very low earnings levels, students are expected to make zero-dollar payments over extended periods of time.

TABLE 1.10—PREDICTED RATIO OF DOLLARS REPAID TO DOLLARS BORROWED BY CONTROL AND PASSAGE STATUS

	Predicted repayment ratio under proposed REPAYE
Public:	
No D/E or EP data	0.53
Pass	0.72
Fail D/E (regardless of EP)	0.29
Fail EP only	0.13
Private, Nonprofit:	
No D/E or EP data	0.69
Pass	0.96
Fail D/E (regardless of EP)	0.38
Fail EP only	0.19
Proprietary:	
No D/E or EP data	0.41
Pass	0.79
Fail D/E (regardless of EP)	0.26
Fail EP only	0.07
Total:	
No D/E or EP data	0.57
Pass	0.77
Fail D/E (regardless of EP)	0.30
Fail EP only	0.12

Our analysis, provided in more detail in ''Analysis of the Regulations,'' shows that for many GE programs, the typical graduate earns less than the typical worker with only a high school diploma or has debt payments that are higher than is considered manageable given typical earnings. As we show below, high rates of student loan default are especially common among GE programs that are projected to fail either the D/E rates or the earnings premium metric. Furthermore, low earnings can cause financial trouble in aspects of a graduate's financial life beyond those related to loan repayment. In 2019, US individuals between 25 and 34 who had any type of postsecondary credential reported much higher rates of material hardship if their annual income was below the high school earnings threshold, with those below the threshold reporting being food insecure and behind on bills at more than double the rate of those with earnings above the threshold.[202]

In light of the low earnings, high debt, and student loan repayment difficulties for students in some GE programs, the Department has identified a risk that students may be spending their time and money and taking on Federal debt to attend programs that do not provide sufficient value to justify these costs. While even very good programs will have some students who struggle to

[199] *https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.*

[200] These estimates of the subsidy rate are not those used in the budget and do not factor in take-up. Rather, they show the predicted subsidy rates under the assumption that all students are enrolled in Proposed REPAYE.

[201] As explained in more detail later, the Department computed D/E and EP metrics only for those programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum cohort size requirements.

[202] These findings come from ED's analysis of the 2019 Survey of Income and Program Participation. This analysis compares individuals with annual income below the 2019 U.S. national median income for individuals with a high school degree aged 25–34 who had positive earnings or reported looking for work in the previous year, according to the Census Bureau's American Community Survey (ACS).

obtain employment or repay their student loans, the proposed metrics identify programs where the majority of students experience adverse financial outcomes upon completion.

Although enrollment in for-profit and sub-baccalaureate programs has declined following the Great Recession, past patterns suggest that—absent regulatory action—future economic downturns could reverse this trend. For-profit institutions are more responsive than public and nonprofit institutions to changes in economic conditions [203] and during the COVID–19 pandemic, it was the only sector to see increases in student enrollment.[204] Additionally, research shows that reductions in State and local funding for public higher education institutions tend to shift college students into the for-profit sector.[205] During economic downturns, this response is especially relevant since State and local funding is procyclical, falling during recessions even as student demand is increasing.[206]

For-profit institutions that participate in title IV, HEA programs are also more reliant on Federal student aid than public and nonprofit institutions. In recent years, around 70 percent of revenue received by for-profit institutions came from Pell Grants and Federal student loans.[207] For-profit institutions also have substantially higher tuition than public institutions offering similar degrees. In recent years, average for-profit tuition and fees charged by two-year for-profit institutions was over 4 times the average tuition and fees charged by community colleges.[208] Research suggests that Federal student aid supports for-profit expansions and higher prices.[209] Indeed, one study finds that for-profit programs in institutions that participate in title IV, HEA programs charge tuition that is around 80 percent higher than tuition charged by programs in the same field and with similar outcomes in nonparticipating for-profit institutions.[210]

For-profit institutions disproportionately enroll students with barriers to postsecondary access: low-income, non-white, and older students, as well as students who are veterans, single parents, or have a General Equivalency Degree.[211] In the 1990s, sanctions related to high cohort default rates led a large number of for-profit institutions to close, significantly reducing enrollment in this sector.[212] Yet, these actions did not reduce access to higher education. Instead, a large share of students who would have attended a sanctioned for-profit institution instead enrolled in local open access public institutions and, as a result, took on less student debt and were less likely to default.[213] Similar conclusions were reached in recent studies of students that experienced program closures.[214] Better evidence is now available on the enrollment outcomes of students that would otherwise attend sanctioned or closed schools than when the 2014 Prior Rule was considered.

2. Summary of Key Provisions

Provision	Regulatory section	Description of proposed provision
Definitions	§ 668.2	Add definitions related to part 668, subparts Q and S, as well as other parts of the proposed regulations.
Financial Value Transparency and Gainful Employment		
Financial value transparency scope and purpose.	§ 668.401	Provide the scope and purpose of newly established financial value transparency regulations under subpart Q.
Financial value transparency framework	§ 668.402	Provide a framework under which the Secretary would assess the debt and earnings outcomes for students at both GE programs and eligible non-GE programs, using a debt-to-earnings metric and an earnings premium metric.
Calculating D/E rates	§ 668.403	Establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payments, annual earnings, loan debt and assessed charges, as well as to provide exclusions and specify when D/E rates would not be calculated.
Calculating earnings premium measure	§ 668.404	Establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings premium measure would not be calculated.
Process for obtaining data and calculating D/E rates and earnings premium measure.	§ 668.405	Establish a process by which the Secretary would obtain administrative and earnings data to issue D/E rates and the earnings premium measure.
Determination of the D/E rates and earnings premium measure.	§ 668.406	Require the Secretary to notify institutions of their financial value transparency metrics and outcomes.

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Gilpin, G.A., Saunders, J., & Stoddard, C. (2015). Why has for-profit colleges' share of higher education expanded so rapidly? Estimating the responsiveness to labor market changes. *Economics of Education Review,* 45, 53–63.

[204] Cellini, S.R. (2020). The Alarming Rise in For-Profit College Enrollment. Washington, DC: Brookings Institution.

[205] Cellini, S.R. (2009). Crowded Colleges and College Crowd-Out: The Impact of Public Subsidies on the Two-Year College Market. *American Economic Journal: Economic Policy,* 1(2), 1–30.

Goodman, S. & Volz, A.H. (2020). Attendance Spillovers between Public and For-Profit Colleges: Evidence from Statewide Variation in Appropriations for Higher Education. *Education Finance and Policy,* 15(3), 428–456.

[206] Ma, J. & Pender, M. (2022). *Trends in College Pricing and Student Aid 2022.* New York: College Board.

[207] Cellini, S. & Koedel, K. (2017). The Case for Limiting Federal Student Aid to For-Profit Colleges. *Journal of Policy Analysis and Management,* 36(4), 934–942.

[208] NCES. (2022). Digest of Education Statistics (Table 330.10). Available at: *nces.ed.gov/programs/digest/d21/tables/dt21_330.10.asp.*

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Lau, C.V. (2014). The incidence of federal subsidies in for-profit higher education. Unpublished manuscript. Evanston, IL: Northwestern University.

[210] Cellini, S.R., & Goldin, C. (2014). Does federal student aid raise tuition? New evidence on for-profit colleges. *American Economic Journal: Economic Policy,* 6(4), 174–206.

[211] Deming, D., Goldin, C., & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

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[212] Darolia, R. (2013). Integrity versus access? The effect of federal financial aid availability on postsecondary enrollment. *Journal of Public Economics,* 106, 101–114.

[213] Cellini, S.R., Darolia, R., & Turner, L.J. (2020). Where do students go when for-profit colleges lose federal aid? *American Economic Journal: Economic Policy,* 12(2), 46–83.

[214] See *https://www.gao.gov/products/gao-22-104403* and *sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.*

Provision	Regulatory section	Description of proposed provision
Student disclosure acknowledgments	§ 668.407	Require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.
Reporting requirements	§ 668.408	Establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.
Severability	§ 668.409	Establish severability protections ensuring that if any provision from part 668 is held invalid, the remaining provisions would continue to apply.
Scope and purpose	§ 668.601	Provide the scope and purpose of the GE regulations under subpart S.
GE criteria	§ 668.602	Establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.
Ineligible GE programs	§ 668.603	Define the conditions under which a failing GE program would lose title IV, HEA eligibility, provide the opportunity for an institution to appeal a loss of eligibility only on the basis of a miscalculated D/E rate or earnings premium, and establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.
Certification requirements for GE programs	§ 668.604	Require institutions to provide the Department with transitional certifications, as well as to certify when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution's recognized accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency.
Warnings and acknowledgments	§ 668.605	Require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge to having seen the warning before the institution may disburse any title IV, HEA funds.
Severability	§ 668.606	Establish severability protections ensuring that if any provision under part 668 is held invalid, the remaining provisions would continue to apply.
Date, extent, duration, and consequence of eligibility.	§ 600.10(c)(1)(v)	Require an institution seeking to establish the eligibility of a GE program to add the program to its application.
Updating application information	§ 600.21(a)(11)	Require an institution to notify the Secretary within 10 days of any update to information included in the GE program's certification.
License/certification disclosure	§ 668.43(a)(5)	Require all programs that are designed to meet educational requirements for a specific professional license or certification for employment in an occupation list all States where the institution is aware the program does and does not meet such requirements.
Institutional and programmatic information	§ 668.43(d)	Establish a website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs; require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution; and require institutions provide information about how to access that website to a current student before the start date of the first payment period associated with each consecutive award year in which the student enrolls.
Initial and final decisions	§ 668.91(d)(3)(vi)	Require that a hearing official must terminate the eligibility of a GE program that fails to meet the GE metrics, unless the hearing official concludes that the Secretary erred in the calculation.
		Financial Responsibility
Centralizing requirements related to change of ownership.	§ 668.15	Remove and reserve section; move all requirements related to financial responsibility and change of ownership to § 668.176.
Timing of audit and financial statement submission.	§ 668.23(a)(4)	Require audit and financial statement submission within the earlier of 30 days after the date of the report or six months after the end of an institution's fiscal year.
Updating audit reference and clarifying fiscal years of submissions.	§ 668.23(d)(1)	Replace the reference to A–133 audits to 2 CFR part 200, subpart F. Require audits cover most up-to-date fiscal year and match periods covered by submissions to the IRS.
Disclosing amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures.	§ 668.23(d)(5)	Require institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.
Increased information from foreign entities	§ 668.23(d)(2)	Require institutions with at least 50 percent ownership by a foreign entity to report additional information.
General financial responsibility standards	§ 668.171(b)	Identify the standards generally used to establish that an institution is financially responsible.
Mandatory triggering events		Identify events that would automatically result in the Department either recalculating a financial responsibility composite score or requiring financial protection from an institution.
Discretionary triggering events	§ 668.171(d)	Identify events that the Secretary could consider in determining whether an institution is not able to meet its financial or administrative obligations and therefore must obtain financial protection.
Recalculating an institution's composite score	§ 668.171(e)	Identify how the Department would recalculate an institution's composite score when certain mandatory triggers occur.
Reporting requirements	§ 668.171(f)	Identify the various triggering events that require the institution to notify the Department that the triggering event has occurred.
Financial responsibility factors for public institutions.	§ 668.171(g)	Establishes financial responsibility standards for public institutions when backed by the full faith and credit of the appropriate government entity.
Audit opinions and disclosures	§ 668.171(h)	Establishes that the Department does not consider an institution to be financially responsible if the audited financial statements contain and opinion that is adverse, qualified or disclaimed unless the Department determines it does not have significant bearing on the institution's financial condition.
Past performance	§ 668.174	Establishes the actions the Department may take based on an individual's or entity's past performance and the related impact on financial responsibility.
Alternative standards and requirements	§ 668.175	Establishes the alternative standards for financial responsibility when the standards in § 668.171(b) are not met or the Department acts based on the triggers in § 668.171(c)&(d).

Provision	Regulatory section	Description of proposed provision
Financial responsibility for changes in ownership.	§ 668.176	Establish the standards and requirements for determining if an institution undergoing a change in ownership is financially responsible.
	Administrative Capability	
Require clear dissemination of financial aid information.	§ 668.16(h)	Expand existing requirements on sufficient financial aid counseling to include clear and accurate financial aid communications to students.
Additional past performance requirements	§ 668.16(k)	Require that institutions not have a principal, affiliate, or anyone who exercises or previously exercised substantial control, who has been convicted of, or who has pled nolo contendere or guilty to, certain crimes or been found to have committed fraud. This also covers similar individuals at other institutions if the institution was found to have engaged in misconduct or faced liabilities in excess of 5 percent of its annual title IV, HEA program funds.
Negative actions	§ 668.16(n)	Provide that an institution is not administratively capable if it has been subject to a significant negative action subject to findings by a State or Federal agency, a court, or accrediting agency, where the basis of the action is repeated or unresolved, and the institution has not lost eligibility to participate in another Federal educational assistance program because of it.
Procedures for determining validity of high school diplomas.	§ 668.16(p)	Require institutions to have adequate procedures for determining the validity of a high school diploma.
Career services	§ 668.16(q)	Require the institution to provide adequate career services.
Accessible clinical externship opportunities	§ 668.16(r)	Require the institution to provide students with accessible clinical or externship opportunities within 45 days of successful completion of coursework.
Timely fund disbursements	§ 668.16(s)	Require the institution to disburse funds to students in a timely manner.
Significant enrollment in failing GE programs	§ 668.16(t)	Provide that an institution is not administratively capable if half of its title IV, HEA revenue and half of its student enrollment comes from programs that are failing the GE requirements in part 668, subpart S.
Misrepresentations	§ 668.16(u)	Provide that an institution is not administratively capable if it has been found to engage in misrepresentations or aggressive recruitment.
	Certification Procedures	
Removing automatic certification approval	§ 668.13(b)(3)	Eliminate provision that requires Department approval to participate in the title IV, HEA programs if the Department has not acted on an application within 12 months.
Provisional certification triggers	§ 668.13(c)(1)	Expand the list of circumstances that may lead to provisional certification.
Recertification timeframe for provisionally certified institutions.	§ 668.13(c)(2)	Require provisionally certified institutions with major consumer protection issues to recertify within a maximum timeframe of two years.
Supplementary performance measures	§ 668.13(e)	Establish supplementary performance measures the Secretary may consider in determining whether to certify or condition the participation of an institution.
Signature requirements for Program Participation Agreements (PPAs).	§ 668.14(a)(3)	Require direct or indirect owners of proprietary or private nonprofit institutions to sign the PPA.
Increasing information sharing on an institution's eligibility for or participation in title IV, HEA programs.	§ 668.14(b)(17)	Expand the list of entities that have the authority to share information pertaining to an institution's eligibility for or participation in title IV, HEA programs or any information on fraud, abuse, or other violations to include Federal agencies and State attorneys general.
Prohibit the contract or employment of any individual, agency, or organization that was at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.	§ 668.14(b)(18)(i) and (ii).	Add to the list of situations in which an institution may not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, 10-percent-or-higher equity owners, directors, officers, principals, executives, or contractors at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.
Limiting excessive hours of GE programs	§ 668.14(b)(26)(ii)	Limit the number of hours in a GE program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student.
Licensure/certification requirements and consumer protection.	§ 668.14(b)(32)	Require all programs that prepare students for occupations requiring programmatic accreditation or State licensure to meet those requirements and comply with all applicable State consumer protection laws related to misrepresentation, closure, and recruitment.
Prohibition on transcript withholding for institutional errors or misconduct and returns under the Return of Title IV Funds requirements.	§ 668.14(b)(33)	Prevents institutions from withholding transcripts or taking any other negative action against a student related to a balance owed by the student that resulted from an institution's administrative error, fraud, or misconduct, or returns of funds under the Return of Title IV Funds requirements.
Adding conditions that may apply to provisionally certified institutions.	§ 668.14(e)	Establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions.
Adding conditions that may apply to for-profit institutions that undergo a change in ownership to convert to a nonprofit institution.	§ 668.14(f)	Establish conditions that may apply to institutions that undergo a change in ownership to convert from a for-profit institution to a nonprofit institution.
Adding conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.	§ 668.14(g)	Establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.
	Ability To Benefit	
Amend student eligibility requirements	§ 668.32	Differentiate between the title IV, HEA aid eligibility of non-high school graduates who enrolled in an eligible program prior to July 1, 2012, and those who enrolled after July 1, 2012.
Amend the State process ATB alternative	§ 668.156	Amend the State process ATB alternative regulations to separate the State process into an initial period and subsequent period. Require institutions to submit an application that includes specified components. Set the success rate needed for approval of the subsequent period at 85 percent and allow an institution up to three years to achieve compliance. Prohibit participating institutions terminated by the State from participating in the State process for five years. Require reporting on the demographics of students enrolling through the State process. Allow the Secretary to lower the success rate to 75 percent in specified circumstances.

Provision	Regulatory section	Description of proposed provision
Add eligible career pathway program documentation requirements.	§ 668.157	Clarify the documentation requirement for eligible career pathway programs.

3. Analysis of the Financial Value Transparency and GE Regulations

This section presents a detailed analysis of the likely consequences of the Financial Value Transparency and GE provisions of the proposed regulations.

Methodology

Data Used in This RIA

This section describes the data referenced in this regulatory impact analysis and the NPRM. To generate information on the performance of different postsecondary programs offered in different higher education sectors, the Department relied on data on the program enrollment, demographic characteristics, borrowing levels, post-completion earnings, and borrower outcomes of students who received title IV, HEA aid for their studies. The Department produced program performance information, using measures based on the typical debt levels and post-enrollment earnings of program completers, from non-public records contained in the administrative systems the Department uses to administer the title IV, HEA programs along with earnings data produced by the U.S. Treasury. This performance information was supplemented with information from publicly available sources including the Integrated Postsecondary Education Data System (IPEDS), Postsecondary Education Participants System (PEPS), and the College Scorecard. The data used for the State earnings thresholds come from the Census Bureau's 2019 American Community Survey, while statistics about the price level used to adjust for inflation come from the Bureau of Labor Statistics' Consumer Price Index. This section describes the data used to produce this program performance information and notes several differences from the measures used for this purpose and the proposed D/E rates and earning premium measures set forth in the rule, as well as differences from the data disseminated during Negotiated Rulemaking. The data described below are referred to as the ''2022 Program Performance Data (2022 PPD),'' where 2022 refers to the year the programs were indicated as active. These data are being released with the NPRM.[215]

The proposed rule relies on non-public measures of the cumulative borrowing and post-completion earnings of federally aided title IV, HEA students, including both grant and loan recipients. The Department has information on all title IV, HEA aid grant and loan recipients at all institutions participating in the title IV, HEA programs, including the identity of the specific programs in which students are enrolled and whether students complete the program. This information is stored in the National Student Loan Data System (NSLDS), maintained by the Department's Office of Federal Student Aid (FSA).

Using this enrollment and completion information, in conjunction with non-public student loan information also stored in NSLDS, and earnings information obtained from Treasury, the Department calculated annual and discretionary debt-to-earnings (D/E) ratios, or rates, for all title IV, HEA programs. The Department also calculated the median earnings of high school graduates aged 25 to 34 in the labor force in the State where the program is located using public data, which is referred to as the Earnings Threshold (ET). This ET is compared to a program's graduates' annual earnings to determine the Earnings Premium (EP), the extent to which a programs' graduates earn more than the typical high school graduate in the same State. The methodology that was used to calculate both D/E rates, the ET, and the EP is described in further detail below. In addition to the D/E rates and earnings data, we also calculated informational outcomes measures, including program-level cohort default rates, to evaluate the likely consequences of the proposed rule.

In our analysis, we define a program by a unique combination consisting of the first six digits of its institution's Office of Postsecondary Education Identification (''OPEID'') number, also referred to as the six-digit OPEID, the program's 2010 Classification of Instructional Programs (CIP) code, and the program's credential level. The terms OPEID number, CIP code, and credential level are defined below. Throughout, we distinguish ''GE Programs'' from those that are not subject to the GE provisions of the proposed rule, referred to as ''non-GE Programs.'' The 2022 PPD includes information for 155,582 programs that account for more than 19 million title IV, HEA enrollments annually in award years 2016 and 2017. This includes 2,931,000 enrollments in 32,058 GE Programs (certificate programs at all institution types, and degree programs at proprietary institutions) and 16,337,000 enrollments in 123,524 non-GE Programs (degree programs at public and private not-for-profit institutions).

We calculated the performance measures in the 2022 PPD for all programs based on the debt and earnings of the cohort of students who both received title IV, HEA program funds, including Federal student loans and Pell Grants, and completed programs during an applicable two-year cohort period. Consistent with the proposed rule, students who do not complete their program are not included in the calculation of the metrics. The annual loan payment component of the debt-to-earnings formulas for the 2022 PPD D/E rates was calculated for each program using student loan information from NSLDS for students who completed their program in award years 2016 or 2017 (*i.e.,* between July 1, 2015, and June 30, 2017—we refer to this group as the 16/17 completer cohort). The earnings components of the rates were calculated for each program using information obtained from Treasury for students who completed between July 1, 2014, and June 30, 2016 (the 15/16 completer cohort), whose earnings were measured in calendar years 2018 and 2019.

Programs were excluded from the 2022 PPD if they are operated by an institution that was not currently active in the Department's PEPS system as of March 25, 2022, if the program did not have a valid credential type, or if the program did not have title IV, HEA

[215] To protect student privacy, we have applied certain protocols to the publicly released 2022 PPD and thus that dataset differs somewhat from the 2022 PPD analyzed in this RIA. Such protocols include omitting the values of variables derived from fewer than 30 students. For instance, the title IV enrollment in programs with fewer than 30 students is used to determine the number and share of enrollment in GE programs in this RIA, while the exact program-level enrollment of such programs is omitted in the public 2022 PPD. The privacy protocols are described in the data documentation accompanying this NPRM. The Department would not have reached different conclusions on the impact of the regulation or on the proposed rules if we had instead relied on this privacy-protective dataset, though the Department views analysis based on the 2022 PPD and described in this NPRM to provide a more precise representation of such impact. We view the differences in the analyses as substantively minor for purposes of this rulemaking.

completers in both the 15/16 and 16/17 completer cohorts.

Consistent with the proposed regulations, the Department computed D/E and EP metrics in the 2022 PPD only for those programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum cohort size requirements. A detailed analysis of the likely coverage rate under the proposed rule and of the number and characteristics of programs that met the minimum size in the 2022 PPD is included in ''Analysis of Data Coverage'' below.

We determined, under the provisions in the proposed regulations for the D/E rates and EP measures, whether each program would ''Pass D/E,'' ''Fail D/E,'' ''Pass EP,'' and ''Fail EP'' based on their 2022 PPD results, or ''No data'' if they did not meet the cohort size requirement.[216] These program-specific outcomes are then aggregated to determine the fraction of programs that pass or fail either metric or have insufficient data, as well as the enrollment in such programs.

- *Pass D/E:* Programs with an annual D/E earnings rate less than or equal to 8 percent *OR* a discretionary D/E earnings rate less than or equal to 20 percent.
- *Fail D/E:* Programs with an annual D/E earnings rate over 8 percent *AND* a discretionary D/E earnings rate over 20 percent.
- *Pass EP:* Programs with median annual earnings greater than the median earnings among high school graduates aged 25 to 34 in the labor force in the State in which the program is located.
- *Fail EP:* Programs with median annual earnings less than or equal to the median earnings among high school graduates aged 25 to 34 in the labor force in the State in which the program is located.
- *No data:* Programs that had fewer than 30 students in the two-year completer cohorts and so earnings and debt levels could not be determined.

Under the proposed regulations, a GE program would become ineligible for title IV, HEA program funds if it fails the D/E rates measure for two out of three consecutive years or fails the EP measure for two out of three consecutive years. GE programs would be required to provide warnings in any year in which the program could lose eligibility based on the next D/E rates or earnings premium measure calculated by the Department. Students at such programs would be required to acknowledge having seen the warning and information about debt and earnings before receiving title IV aid. Eligible non-GE programs not meeting the D/E standards would need to have students acknowledge viewing this information before receiving aid.

The Department analyzed the estimated impact of the proposed regulations on GE and non-GE programs using the following data elements defined below:

- *Enrollment:* Number of students receiving title IV, HEA program funds for enrollment in a program. To estimate enrollment, we used the count of students receiving title IV, HEA program funds, averaged over award years 2016 and 2017. Since students may be enrolled in multiple programs during an award year, aggregate enrollment across programs will be greater than the unduplicated number of students.
- *OPEID:* Identification number issued by the Department that identifies each postsecondary educational institution (institution) that participates in the Federal student financial assistance programs authorized under title IV of the HEA.
- *CIP code:* Identification code from the Department's National Center for Education Statistics' (NCES) Classification of Instructional Programs, which is a taxonomy of instructional program classifications and descriptions that identifies instructional program specialties within educational institutions. The proposed rule would define programs using six-digit CIP codes, but due to data limitations, the statistics used in this NPRM and RIA are measured using four-digit codes to identify programs.[217] We used the 2010 CIP code instead of the 2020 codes to align with the completer cohorts used in this analysis.
- *Control:* The control designation for a program's institution—public, private non-profit, private for-profit (proprietary), foreign non-profit, and foreign for-profit—using PEPS control data as of March 25, 2022.
- *Credential level:* A program's credential level—undergraduate certificate, associate degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, first professional degree, or post-graduate certificate.
- *Institution predominant degree:* The type designation for a program's institution which is based on the predominant degree the institution awarded in IPEDS and reported in the College Scorecard: less than 2 years, 2 years, and 4 years or more.
- *State:* Programs are assigned to a U.S. State, DC, or territory based on the State associated with the main institution.

The information contained in the 2022 PDD and used in the analysis necessarily differs from that used to evaluate programs under the proposed rule in a few ways due to certain information not being currently collected in the same form as it would under the proposed rule. These include:

- 4-digit CIP code is used to define programs in the 2022 PPD, rather than 6-digit CIP code. Program earnings are not currently collected at the 6-digit CIP code level, but would be under the proposed rule. Furthermore, the 2022 PPD uses 2010 CIP codes to align with the completer cohorts used in the analysis, but programs would be defined using the 2020 CIP codes under the proposed rule;
- Unlike the proposed rule, the total loan debt associated with each student is not capped at an amount equivalent to the program's tuition, fees, books, and supplies in the 2022 PPD, nor does debt include institutional and other private debt. Doing so requires additional institutional reporting of relevant data items not currently available to the Department. In the 2014 Prior Rule, using information reported by institutions, the tuition and fees cap was applied to approximately 15 percent of student records for the 2008–2009 2012 D/E rates cohort, though this does not indicate the share of programs whose median debt would be altered by the cap.

[216] This is a simplification. Under the proposed regulation, a ''no data'' year is not considered passing when determining eligibility for GE programs based on two out of three years. For non-GE programs, passing with data and without data are treated the same for the purposes of the warnings.

[217] In many cases the loss of information from conducting analysis at a four- rather than six-digit CIP code is minimal. According to the Technical Documentation: College Scorecard Data by Field of Study, 70 percent of credentials conferred were in four-digit CIP categories that had only one six-digit category with completers at an institution. The 2015 official GE rates can be used to examine the extent of variation in program debt and earnings outcomes across 6-digit CIP programs within the same credential level and institution.

• D/E rates using earnings levels measured in calendar years 2018 and 2019 would ideally use debt levels measured for completers in 2015 and 2016. Since program level enrollment data are more accurate for completers starting in 2016, we use completers in 2016 and 2017 to measure debt. We measure median debt levels and assume completers in the 2015 and 2016 cohorts would have had total borrowing that was the same in real terms (*i.e.,* we use the CPI to adjust their borrowing levels to estimate what the earlier cohort would have borrowed in nominal terms). This use of one cohort to measure earnings outcomes and another to measure debt necessarily reduces the estimated coverage in the 2022 PPD to a lower level than will be experienced in practice, as we describe in more detail below. Finally, the methodology used to assign borrowing to particular programs in instances where a borrower may be enrolled in multiple programs is different in the 2022 PPD than the methodology that would be used in the proposed rule (which is the same as that used in the 2014 Prior Rule);

• Medical and dental professional programs are not evaluated because earnings six years after completion are not available. The earnings and debt levels of these programs are set to missing and not included in the tabulations presented here;

• 150 percent of the Federal Poverty Guideline is used to define the ET for institutions in U.S. Territories (other than Puerto Rico, which uses Puerto Rico-specific ET) and foreign institutions in the 2022 PPD, rather than a national ET;

• The proposed rule would use a national ET if more than half of a program's students are out-of-state, but the 2022 PPD use an ET determined by the State an institution is located;

• Programs at institutions that have merged with other institutions since 2017 are excluded, but these programs' enrollment would naturally be incorporated into the merged institution if the proposed rule goes into effect.

• Under the proposed rule, if the two-year completer cohort has too few students to publish debt and earnings outcomes, but the four-year completer cohort has a sufficient number of students, then debt and earnings outcomes would be calculated for the four-year completer cohort. This was not possible for the 2022 PPD, so some programs with no data in our analysis would have data to evaluate performance under the proposed rule.

The 2022 PPD also differ from those published in the Negotiated Rulemaking data file in several ways. The universe of programs in the previously published Negotiated Rulemaking data file were based, in part, on the College Scorecard universe which included programs as they are reported to IPEDS, but not necessarily to NSLDS. IPEDS is a survey, so institutions may report programs (degrees granted by credential level and CIP code) differently in IPEDS than is reflected in NSLDS. To reflect the impact of the proposed rule more accurately, the universe of the 2022 PPD is based instead on NSLDS records because it captures programs as reflected in the data systems used to administer title IV, HEA aid. Nonetheless, the 2022 PPD accounts for the same loan volume reflected in the Negotiated Rulemaking data file. In addition, the Negotiated Rulemaking data file included programs that were based on a previous version of College Scorecard prior to corrections made to resolve incorrect institution-reported information in underlying data sources.

Methodology for D/E Rates Calculations

The D/E rates measure is comprised of two debt-to-earnings ratios, or rates. The first, the annual earnings rate, is based on annual earnings, and the second, the discretionary earnings rate, is based on discretionary earnings. These two components together define a relationship between the maximum typical amount of debt program graduates should borrow based on the programs' graduates' typical earnings. Both conceptually and functionally the two metrics operate together, and so should be thought of as one ''debt to earnings (D/E)'' metric. The formulas for the two D/E rates are:

Annual Earnings Rate = (Annual Loan Payment)/(Annual Earnings)

Discretionary Earnings Rate = (Annual Loan Payment)/(Discretionary Earnings)

A program's annual loan payment, the numerator in both rates, is the median annual loan payment of the 2016–2017 completer cohort. This loan payment is calculated based on the program's cohort median total loan debt at program completion, including non-borrowers, subject to assumptions on the amortization period and interest rate. Cohorts' median total loan debt at program completion were computed as follows.

• Each student's total loan debt includes both FFEL and Direct Loans. Loan debt does not include PLUS Loans made to parents, Direct Unsubsidized Loans that were converted from TEACH Grants, private loans, or institutional loans that the student received for enrollment in the program.

• In cases where a student completed multiple programs at the same institution, all loan debt is attributed to the highest credentialed program that the student completed, and the student is not included in the calculation of D/E rates for the lower credentialed programs that the student completed.

• The calculations exclude students whose loans were in military deferment, or who were enrolled at an institution of higher education for any amount of time in the earnings calendar year, or whose loans were discharged because of disability or death.

The median annual loan payment for each program was derived from the median total loan debt by assuming an amortization period and annual interest rate based on the credential level of the program. The amortization periods used were:

• 10 years for undergraduate certificate, associate degree, post-baccalaureate certificate programs, and graduate certificate programs;

• 15 years for bachelor's and master's degree programs;

• 20 years for doctoral and first professional degree programs.

The amortization periods account for the typical outcome that borrowers who enroll in higher-credentialed programs (*e.g.,* bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enroll in lower-credentialed programs and, as a result, are more likely to take longer to repay their loans. These amortization rates mirror those used in the 2014 Prior Rule, which were based on Department analysis of loan balances and the differential use of repayment plan periods by credential level at that time.[218] The interest rates used were:

• 4.27 percent for undergraduate programs;

• 5.82 percent for graduate programs.

For both undergraduate and graduate programs, the rate used is the average interest rate on Federal Direct Unsubsidized loans over the three years prior to the end of the applicable cohort period, in this case, the average rate for loans disbursed between the beginning of July 2013 and the end of June 2016.

The denominators for the D/E rates are two different measures of student earnings. Annual earnings are the median total earnings in the calendar year three years after completion, obtained from the U.S. Treasury. Earnings were measured in calendar years 2018 and 2019 for completers in award years 2015–2016 and 2016–2017, respectively, and were converted to

[218] See pages 64939–40 of 79 FR *https://www.federalregister.gov/d/2014-25594.*

2019 dollars using the CPI–U. Earnings are defined as the sum of wages and deferred compensation for all W–2 forms plus self-employment earnings from Schedule SE.[219] Graduates who were enrolled in any postsecondary program during calendar year 2018 (2015–2016 completers) or 2019 (2016–2017 completers) are excluded from the calculation of earnings and the count of students. Discretionary earnings are equal to annual earnings, calculated as above, minus 150 percent of the Federal Poverty Guidelines for a single person, which for 2019 is earnings in excess of $18,735.

Professional programs in Medicine (MD) and Dentistry (DDS) would have earnings measured over a longer time horizon to accommodate lengthy post-graduate internship training, where earnings are likely much lower three years after graduation than they would be even a few years further removed from completion.[220] Since longer horizon earning data are not currently available, earnings for these programs were set to missing and treated as if they lacked sufficient number of completers to be measured.

Methodology for EP Rate Calculation

The EP measures the extent to which a program's graduates earn more than the typical high school graduate in the same State. The Department first calculated the ET, which is the median earnings of high school graduates in the labor force in each State where the program is located. The ET is adjusted for differences in high school earnings across States and over time so it naturally accounts for variations across these dimensions to reflect what workers would be expected to earn in the absence of postsecondary participation. The ET is computed as the median annual earnings among respondents aged 25–34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education, and who are in the labor force when they are interviewed, indicated by working or looking for and being available to work. The ET is lower than that proposed during Negotiated Rulemaking, which would compute median annual earnings among respondents aged 25–34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education, and who reported working (*i.e.,* having positive earnings) in the year prior to being surveyed. Table 3.1 below shows the ET for each State (along with the District of Columbia and Puerto Rico) in 2019. The ET ranges from $31,294 (North Dakota) to $20,859 (Mississippi). The threshold for institutions in U.S. territories (other than Puerto Rico) and outside the United States is $18,735. We provide evidence in support of the chosen threshold below. Estimates of the impact of the proposed regulations using these alternative thresholds are presented in Section 9 ''Regulatory Alternatives Considered.''

TABLE 3.1—EARNINGS THRESHOLDS BY STATE, 2019

	Earnings threshold, 2019
State of Institution:	
Alabama	22,602
Alaska	27,489
Arizona	25,453
Arkansas	24,000
California	26,073
Colorado	29,000
Connecticut	26,634
Delaware	26,471
District of Columbia	21,582
Florida	24,000
Georgia	24,435
Hawaii	30,000
Idaho	26,073
Illinois	25,030
Indiana	26,073
Iowa	28,507
Kansas	25,899
Kentucky	24,397
Louisiana	24,290
Maine	26,073
Maryland	26,978
Massachusetts	29,830
Michigan	23,438
Minnesota	29,136
Mississippi	20,859
Missouri	25,000
Montana	25,453
Nebraska	27,000
Nevada	27,387
New Hampshire	30,215
New Jersey	26,222
New Mexico	24,503
New York	25,453
North Carolina	23,300
North Dakota	31,294
Ohio	24,000
Oklahoma	25,569
Oregon	25,030
Pennsylvania	25,569
Rhode Island	26,634
South Carolina	23,438
South Dakota	28,000
Tennessee	23,438
Texas	25,899
Utah	28,507
Vermont	26,200
Virginia	25,569
Washington	29,525
West Virginia	23,438
Wisconsin	27,699
Wyoming	30,544
Puerto Rico	9,570
Foreign Institutions & Territories	18,735

The EP is computed as the difference between Annual Earnings and the ET:

Earnings Premium = (Annual Earnings) − (Earnings Threshold)

where the Annual Earnings is computed as above, and the ET is assigned for the State in which the program is located. For foreign institutions and institutions located in U.S. territories, 150 percent of the Federal Poverty Guideline for the given year is used as the ET because comparable information about high school graduate earnings is not available.

The Department conducted several analyses to support the decision of the particular ET chosen. The discussion here focuses on undergraduate certificate programs, which our analysis below suggests is the sector where program performance results are most sensitive to the choice of ET.

First, based on student age information available from students' Free Application for Federal Student Aid (FAFSA) data, we estimate that the typical undergraduate program graduate three years after completion, when their earnings are measured, would be 30 years old. The average age of students three years after completion for undergraduate certificate programs is 31 years, while for Associate's programs it is 30, Bachelor's 29, Master's 33, Doctoral 38, and Professional programs 32. There are very few Post-BA and Graduate Certificate programs (162 in total) and their average ages at earnings measurement 35 and 34, respectively.[221]

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[219] See Technical Documentation: College Scorecard Data by Field of Study.

[220] For example, the average medial resident earns between roughly $62,000 and $67,000 in the first three years of residency, according to the AAMC Survey of Resident/Fellow Stipends and Benefits, and the mean composition for physicians is $260,000 for primary care and $368,000 for specialists, according to the Medscape Physician Compensation Report.

[221] Age at earnings measurement is not contained in the data, so we estimate it with age at FAFSA filing immediately before program enrollment plus typical program length (1 for certificate, 2 for Associate's programs, 4 for Bachelor's programs) plus 3 years. To the extent that students take longer to complete their programs, the average age will be even older than what is reported here. Using this approach, the mean age when earnings are likely to be measured in programs with at least 30 students is 30.34 across all undergraduate programs; the mean for undergraduate certificate students is 30.42.

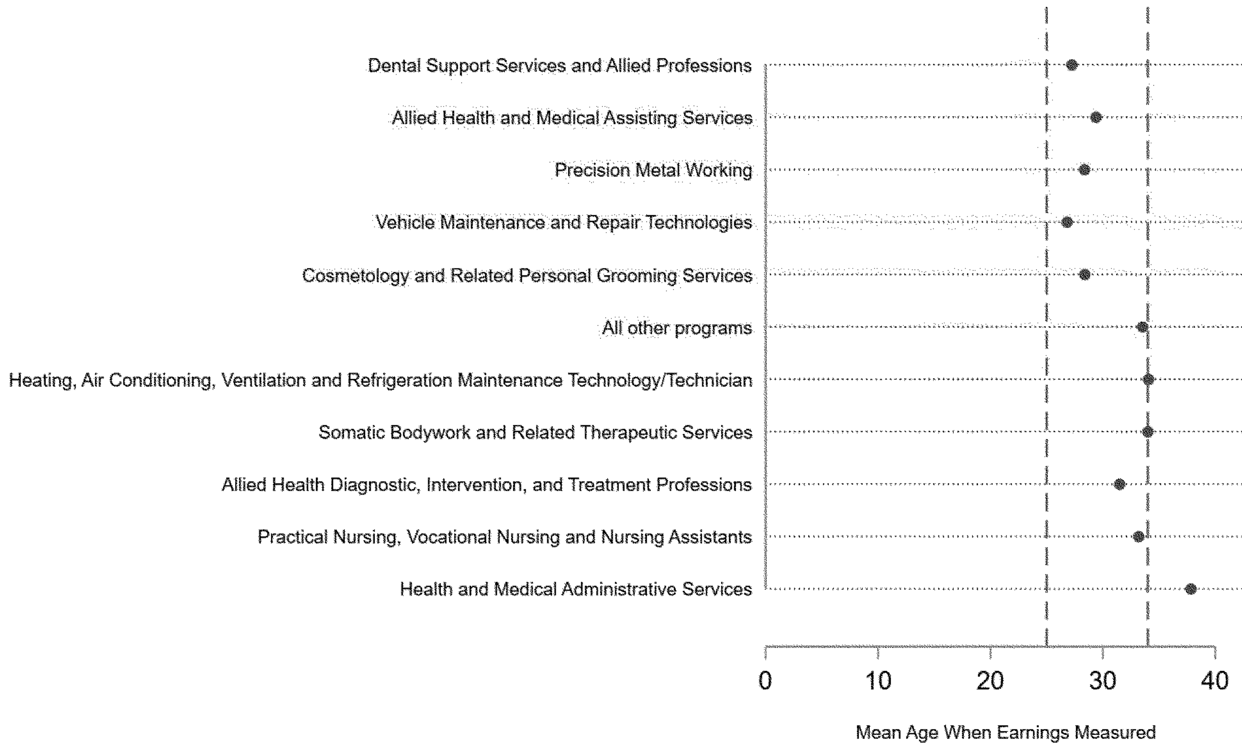

Figure 3.1. Mean Age When Earnings are Measured, UG

For-Profit Certificate Programs

Figure 3.1 shows the average estimated age for for-profit certificate holders 3 years after completion, when earnings would be measured, for the 10 most common undergraduate certificate programs (and an aggregate 'other' category). All credentials have an average age that falls within or above the range of ages used to construct the earnings threshold. In cases where the average age falls above this range, our earnings threshold is lower than it would be if we adjusted the age band use to match the programs' completers ages.

Second, the ET proposed is typically less than the average pre-program income of program entrants, as measured in their FAFSA. Figure 3.2 shows average pre-program individual income for students at these same types of certificate programs, including any dependent and independent students that had previously been working.[222] The figure also plots the ET and the average post-program median earnings for programs under consideration. The program-average share of students used to compute pre-program income is also reported in parentheses.[223] Pre-program income falls above or quite close to the ET for most types of certificate programs. Furthermore, the types of certificate programs which we show below have very high failure rates—Cosmetology and Somatic Bodywork (massage), for example—are unusual in having very low post-program earnings compared to other programs that have similar pre-program income.

We view this as suggestive evidence that the ET chosen provides a reasonable, but conservative, guide to the minimum earnings that program graduates should be expected to obtain.[224]

[222] To exclude workers that are minimally attached to the labor force or in non-covered employment, the Census Postsecondary Employment Outcomes data requires workers to have annual earnings greater than or equal to the annual equivalent of full-time work at the prevailing Federal minimum wage and at least three quarters of non-zero earnings. (*lehd.ces.census.gov/data/pseo_documentation.html*). We impose a similar restriction, including only those students whose pre-program earnings are equivalent to full-time work for three quarters at the Federal minimum wage. We only compute average pre-program income if at least 30 students meet this criteria.

[223] Across undergraduate certificate programs for which the pre-program income measure was calculated, the average share of students meeting the criteria is 41 percent (weighting each program equally) or 38 percent (weighting programs by title IV, HEA enrollment). Given incomplete coverage and the potential for non-random selection into the sample measuring pre-program income, we view this analysis only suggestive.

[224] The earnings of 25 to 34 high school graduates used to construct the ET (similar in age to program completers 3 years after graduation) should be expected to exceed pre-program income because the former likely has more labor force experience than the latter. Thus the comparison favors finding that the ET exceeds pre-program income. The fact that pre-program income generally exceeds the ET suggests that the ET is conservative.

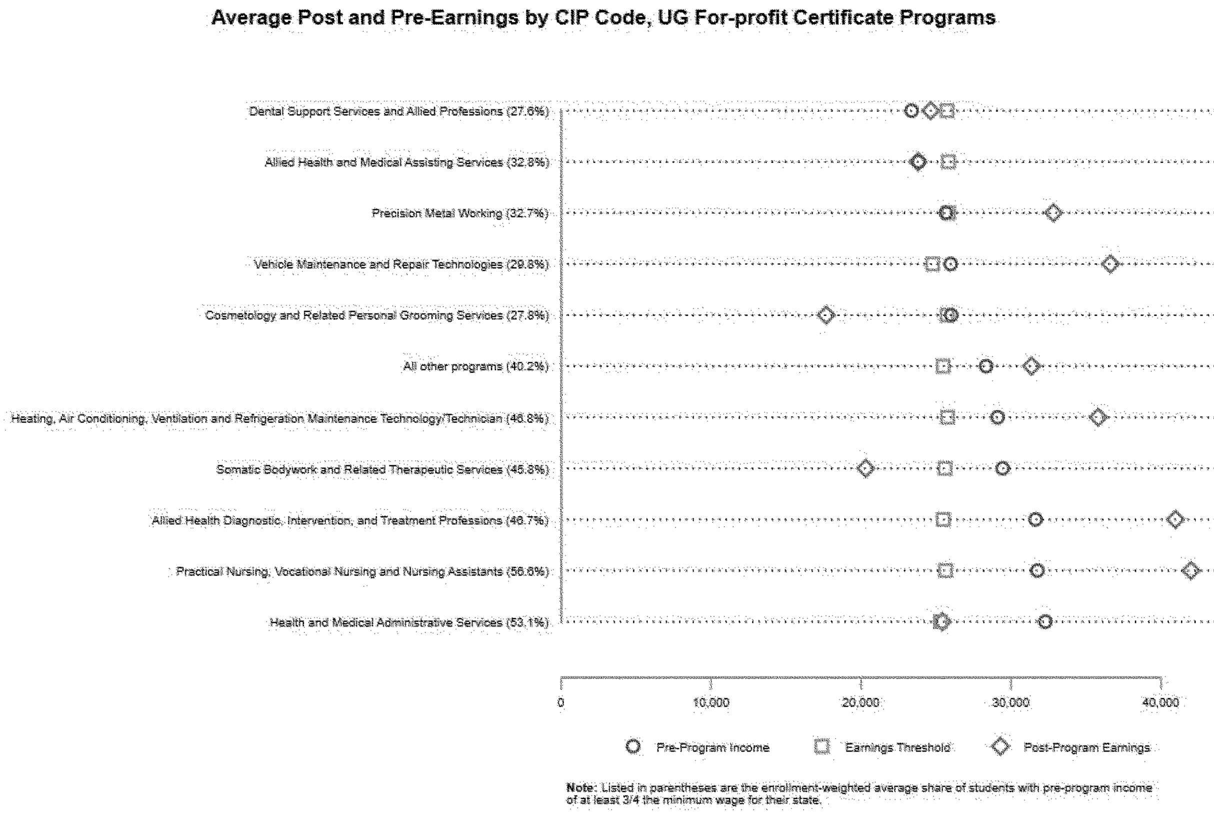

Figure 3.2 Average Income Before Program and Earnings After Program, For-Profit UG Certificate Programs

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Analysis of Data Coverage

This section begins with a presentation of the Department's estimate of the share of enrollment and programs that would meet the n-size requirement and be evaluated under the proposed rule. We assembled data on the number of completers in the two-year cohort period (AYs 2016–2017) and total title IV enrollment for programs defined at the six-digit OPEID, credential level, and six-digit CIP code from NSLDS. This is the level of aggregation that would be used in the proposed rule. Total Title IV enrollment at this same level of disaggregation was also collected. Deceased students and students enrolled during the earnings measurement rule would be excluded from the earnings sample under the proposed rule; however, the Department has not yet applied such information on the number of such completers to the counts described above. We therefore impute the number of completers in the earning sample by multiplying the total completer count in our data by 82 percent, which is the median ratio of non-enrolled earning count to total completer count derived from programs defined at a four-digit CIP code level.

Table 3.2 below reports the share of Title IV, HEA enrollment and programs that would have metrics computed under an n-size of 30 and using six-digit CIP codes to define programs. We estimate that 75 percent of GE enrollment and 15 percent of GE programs would have sufficient n-size to have metrics computed with a two-year cohort. An additional 8 percent of enrollment and 11 percent of programs have an n-size of between 15 and 29 and would thus be likely have metrics computed using a four-year completer cohort. The comparable rates for eligible non-GE programs are 69 percent of enrollment and 19 percent of programs with a n-size of 30 and using two-year cohort metrics, with the use of four-year cohort rates likely increasing these coverage rates of enrollment and programs by 13 and 15 percent, respectively.

The table also reports similar estimates aggregating programs to a four-digit CIP code level. Coverage does not diminish dramatically (3–5 percentage points) when moving from four-digit CIP codes, as presented in the 2022 PPD, to six-digit CIP codes to define programs.

We note that the high coverage of Title IV enrollment relative to Title IV programs reflects the fact that there are many very small programs with only a few students enrolled each year. For example, based on our estimates, more than half of all programs (defined at six-digit CIP code) have fewer than five students completing per year and about twenty percent have fewer than five students enrolled each year. The Department believes that the coverage of students based on enrollment is sufficiently high to generate substantial net benefits and government budget savings from the policy, as described in ''Net Budget Impacts'' and ''Accounting Statement'' below. We believe that the extent to which enrollment is covered by the proposed rule is the appropriate measure on which to focus coverage analysis on because the benefits, costs, and transfers associated with the policy almost all scale with the number of students (enrollment or completions) rather than the number of programs.

TABLE 3.2—SHARE OF ENROLLMENT AND PROGRAMS MEETING SAMPLE SIZE RESTRICTIONS, BY CIP CODE LEVEL

	Enrollment		Programs	
	CIP4	CIP6	CIP4	CIP6
GE Programs:				
n-size = 15	0.86	0.83	0.29	0.26
n-size = 30	0.79	0.75	0.18	0.15
Non-GE Programs:				
n-size = 15	0.85	0.82	0.39	0.34
n-size = 30	0.74	0.69	0.23	0.19

Notes: Average school-certified enrollment in AY1617 is used as the measure of enrollment, but the 2022 PPD analyzed in the RIA uses total (certified and non-certified) enrollment, so coverage rates will differ. Non-enrolled earnings count for AY1617 completers is not available at a six-digit CIP level (for any n-size) or at a four-digit CIP level (for n-size = 15). Therefore, non-enrolled earnings counts are imputed based on the median ratio of non-enrolled earnings count to total completer counts at the four-digit CIP level where available. This median ratio is multiplied by the actual completer count for AY1617 at the four- and six-digit CIP level for all programs to determine the estimated n-size.

The rest of this section describes coverage rates for programs as they appear in the 2022 PPD to give context for the numbers presented in the RIA. Again, the analyses above are the better guide to the coverage of metrics we expect to publish under the rule. The coverage in the 2022 PPD is lower than that reported in Table 3.2, due to differences in data used and because the 2022 PPD does not apply the four-year cohort period ''look back'' provisions and instead only uses two-year cohorts.[225]

Tables 3.3a and 3.3b report the share of non-GE and GE enrollment and programs with valid D/E rates and EP rates in the 2022 PPD, by control and credential level. For Non-GE programs, metrics could be calculated for 62.0 percent of enrollment who attended 18.0 percent of programs. Coverage is typically highest for public bachelor's degree programs and professional programs at private non-profit institutions. Doctoral programs in either sector are the least likely to have sufficient size to compute performance metrics. Programs at foreign institutions are very unlikely to have a sufficient number of completers.

Overall, 65.4 percent of title IV, HEA enrollment is in GE programs that have a sufficient number of completers to allow the Department to construct both valid D/E and EP rates in the 2022 PPD. This represents 12.8 percent of GE programs. Note that a small number of programs have an EP metric computed but a D/E metric is not available because there are fewer than 30 completers in the two-year debt cohort. Coverage is typically higher in the proprietary sector—we are able to compute D/E or EP metrics for programs accounting for about 87.0 percent of enrollment in proprietary undergraduate certificate programs. Comparable rates are 61.5 percent and 21.4 percent of enrollment in the non-profit and public undergraduate certificate sectors, respectively.

TABLE 3.3a—PERCENT OF PROGRAMS AND ENROLLMENT IN PROGRAMS WITH VALID D/E AND EP INFORMATION BY CONTROL AND CREDENTIAL LEVEL (NON-GE PROGRAMS)

	Data availability category					
	Has both D/E and EP		Has EP only		Does not have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Public:						
Associate's	11.6	55.8	0.3	0.3	88.1	43.9
Bachelor's	39.3	74.3	0.5	0.2	60.2	25.5
Master's	15.5	57.4	0.8	0.9	83.8	41.7
Doctoral	3.0	21.7	0.3	0.7	96.7	77.6
Professional	37.7	55.5	0.7	0.6	61.6	43.9
Private, Nonprofit:						
Associate's	12.6	61.9	0.4	0.1	87.0	38.0
Bachelor's	13.4	50.6	0.3	0.4	86.3	49.1
Master's	19.7	67.1	0.9	0.9	79.3	32.0
Doctoral	7.6	50.8	0.3	1.9	92.1	47.4
Professional	43.3	74.8	1.9	0.8	54.8	24.4
Foreign Private:						
Associate's	....	....	....	....	100.0	100.0
Bachelor's	0.1	1.2	....	....	99.9	98.8
Master's	0.3	4.6	0.1	0.4	99.6	95.0
Doctoral	....	....	....	....	100.0	100.0
Professional	3.4	20.7	1.1	3.9	95.5	75.4
Total:						
Total	18.0	62.0	0.4	0.4	81.6	37.7

[225] Unlike the proposed rule, the 2022 PPD also combines earnings and debt data from two different (but overlapping) two-year cohorts. Alternatively, the calculations in Table 3.2 use information for a single two-year completer cohort for both earnings and debt, as the rule would do, and thus provides a more accurate representation of the expected overall coverage. A second difference between the coverage estimates in Table 3.2 and that in the 2022 PPD has do with different data sources that result in slightly different estimates of enrollment coverage between the two sources.

TABLE 3.3b—PERCENT OF PROGRAMS AND ENROLLMENT IN PROGRAMS WITH VALID D/E AND EP INFORMATION BY CONTROL AND CREDENTIAL LEVEL (GE PROGRAMS)

	Data availability category					
	Has both D/E and EP		Has EP only		Does not have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Public:						
UG Certificates	4.8	21.4	0.3	0.4	94.9	78.2
Post-BA Certs	0.9	7.0	0.1	0.2	99.0	92.7
Grad Certs	2.7	21.7	0.2	1.3	97.1	77.0
Private, Nonprofit:						
UG Certificates	12.4	61.5	0.5	0.1	87.1	38.4
Post-BA Certs	0.7	3.8	1.0	2.5	98.3	93.8
Grad Certs	3.9	25.6	0.4	1.1	95.8	73.4
Proprietary:						
UG Certificates	50.8	87.0	1.4	0.4	47.8	12.7
Associate's	34.9	84.4	2.3	0.7	62.9	15.0
Bachelor's	38.5	91.6	1.3	0.6	60.3	7.8
Post-BA Certs	8.7	62.2	....	....	91.3	37.8
Master's	41.4	93.2	2.1	0.7	56.4	6.1
Doctoral	35.0	74.0	1.7	3.9	63.3	22.2
Professional	31.0	65.1	3.4	21.2	65.5	13.7
Grad Certs	16.1	66.8	4.8	1.1	79.0	32.2
Total:						
Total	12.8	65.4	0.6	0.7	86.6	34.0

Explanation of Terms

While most analysis will be simple cross-tabulations by two or more variables, we use linear regression analysis (also referred to as ''ordinary least squares'') to answer some questions about the relationship between variables holding other factors constant. Regression analysis is a statistical method that can be used to measure relationships between variables. For instance, in the demographic analysis, the demographic variables we analyze are referred to as ''independent'' variables because they represent the potential inputs or determinants of outcomes or may be proxies for other factors that influence those outcomes. The annual debt to earnings (D/E) rate and earnings premium (EP) are referred to as ''dependent'' variables because they are the variables for which the relationship with the independent variables is examined. The output of a regression analysis contains several relevant points of information. The ''coefficient,'' also known as the point estimate, for each independent variable is the average amount that a dependent variable is estimated to change with a one-unit change in the associated independent variable, holding all other independent variables included in the model constant. The standard error of a coefficient is a measure of the precision of the estimate. The ratio of the coefficient and standard error, called a ''t-statistic'' is commonly used to determine whether the relationship between the independent and dependent variables is ''statistically significant'' at conventional levels.[226] If an estimated coefficient is imprecise (*i.e.,* it has a large standard error relative to the coefficient), it may not be a reliable measure of the underlying relationship. Higher values of the t-statistic indicate a coefficient is more precisely estimated. The ''R-squared'' is the fraction of the variance of the dependent variable that is statistically explained by the independent variables.

Results of the Financial Value Transparency Measures for Programs Not Covered by Gainful Employment

In this subsection we examine the results of the transparency provisions of the proposed regulations for the 123,524 non-GE Programs. The analysis is focused on results for a single set of financial-value measures—approximating rates that would have been released in 2022 (with some differences, described above). Though programs with fewer than 30 completers in the cohort are not subject to the D/E and EP tests and would not have these metrics published, we retain these programs in our analysis and list them in the tables as ''No Data'' to provide a more complete view of the distribution of enrollment and programs across the D/E and EP metrics.

Table 3.4 and 3.5 reports the results for non-GE programs by control and credential level. Non-GE programs with failing D/E metrics are required to have students acknowledge having seen the program outcome information before aid is disbursed. Students at non-GE programs that do not pass the earnings premium metric are not subject to the student acknowledgement requirement, however, for informational purposes, we report rates of passing this metric for non-GE programs as well. We expect performance on the EP metric contained on the ED-administered program disclosure website to be of interest to students even if it is not part of the acknowledgement requirement. This analysis shows that:

- 870 public and 760 non-profit degree programs (representing 1.2 and 1.6 percent of programs and 4.6 and 7.8 percent of enrollment, respectively) would fail at least one of the D/E or EP metrics.
- At the undergraduate level, failure of the EP metric is most common at public Associate degree programs, whereas failure of the D/E metric is relatively more common among Bachelor's degree programs, particularly at non-profit institutions.
- Failure for graduate programs is almost exclusively due to the failure of the D/E metric and is most prominent for doctoral and professional programs at private, non-profit institutions.
- In total, 127,900 students (1.1 percent) at public institutions and 273,700 students (6.8 percent) at non-profit institutions are in programs with failing D/E metrics and would be required to provide acknowledgment prior to having aid disbursed.

[226] We use significance level, or alpha, of 0.05 when assessing the statistical significance in our regression analysis.

TABLE 3.4—NUMBER AND PERCENT OF TITLE IV ENROLLMENT IN NON-GE BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Percent of enrollment					Number of enrollments				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public:										
Associate's	44.1	48.1	0.4	0.2	7.3	2,424,700	2,642,100	19,900	9,800	400,400
Bachelor's	25.7	72.5	1.1	0.2	0.6	1,491,800	4,202,800	63,000	10,300	32,800
Master's	42.6	55.8	1.5	0.0	0.0	324,300	424,600	11,300	300	0
Doctoral	78.3	19.1	2.6	0.0	0.0	113,600	27,800	3,800	0	0
Professional	44.5	48.0	7.5	0.0	0.0	56,700	61,100	9,600	0	0
Total	35.8	59.7	0.9	0.2	3.5	4,411,100	7,358,400	107,600	20,300	433,200
Private, Nonprofit:										
Associate's	38.1	37.2	7.7	15.3	1.7	101,800	99,300	20,700	40,700	4,500
Bachelor's	49.4	46.3	1.8	1.1	1.3	1,310,000	1,228,500	47,900	30,100	34,700
Master's	32.8	59.4	7.4	0.3	0.1	261,400	472,900	58,600	2,400	800
Doctoral	49.2	31.0	19.6	0.1	0.0	70,300	44,300	28,000	200	0
Professional	25.2	40.1	34.6	0.0	0.2	32,800	52,300	45,100	0	200
Total	44.5	47.6	5.0	1.8	1.0	1,776,300	1,897,400	200,300	73,400	40,200
Foreign Private:										
Associate's	100.0	0.0	0.0	0.0	0.0	100	0	0	0	0
Bachelor's	98.8	0.0	0.0	1.2	0.0	5,400	0	0	100	0
Master's	95.4	2.8	1.8	0.0	0.0	8,600	300	200	0	0
Doctoral	100.0	0.0	0.0	0.0	0.0	2,800	0	0	0	0
Professional	79.3	0.0	20.7	0.0	0.0	1,200	0	300	0	0
Total	95.7	1.3	2.6	0.4	0.0	18,100	300	500	100	0
Total:										
Associate's	43.8	47.6	0.7	0.9	7.0	2,526,500	2,741,400	40,500	50,500	404,800
Bachelor's	33.2	64.2	1.3	0.5	0.8	2,807,200	5,431,300	111,000	40,400	67,500
Master's	38.0	57.3	4.5	0.2	0.1	594,300	897,800	70,100	2,700	800
Doctoral	64.2	24.8	10.9	0.1	0.0	186,700	72,100	31,800	200	0
Professional	35.0	43.7	21.2	0.0	0.1	90,700	113,400	55,000	0	200
Total	38.0	56.7	1.9	0.6	2.9	6,205,500	9,256,100	308,400	93,800	473,400

Note: Enrollment counts rounded to the nearest 100.

TABLE 3.5—NUMBER AND PERCENT OF NON-GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	Percent	N	Percent	N	Percent	N	Percent	N	Percent	N
Public:										
Associate's	88.5	24,161	9.9	2,694	0.1	24	0.1	19	1.5	414
Bachelor's	60.8	14,801	37.8	9,202	0.7	164	0.2	48	0.5	123
Master's	84.6	12,337	15.0	2,191	0.3	50	0.0	3	0.0	1
Doctoral	97.0	5,553	2.8	162	0.2	9	0.0	0	0.0	0
Professional	63.4	360	33.5	190	3.2	18	0.0	0	0.0	0
Total	78.9	57,212	19.9	14,439	0.4	265	0.1	70	0.7	538
Private, Nonprofit:										
Associate's	87.7	2,036	9.1	212	1.2	28	1.5	34	0.5	11
Bachelor's	86.7	25,784	12.4	3,689	0.4	125	0.3	75	0.3	79
Master's	80.5	8,342	17.1	1,771	2.2	227	0.2	17	0.0	5
Doctoral	92.4	2,638	5.3	150	2.2	64	0.1	2	0.0	0
Professional	57.6	284	25.2	124	16.6	82	0.0	0	0.6	3
Total	85.4	39,084	13.0	5,946	1.1	526	0.3	128	0.2	98
Foreign Private:										
Associate's	100.0	18	0.0	0	0.0	0	0.0	0	0.0	0
Bachelor's	99.9	1,227	0.0	0	0.0	0	0.1	1	0.0	0
Master's	99.7	3,067	0.1	4	0.1	3	0.0	0	0.0	1
Doctoral	100.0	793	0.0	0	0.0	0	0.0	0	0.0	0
Professional	97.1	101	0.0	0	2.9	3	0.0	0	0.0	0
Total	99.8	5,206	0.1	4	0.1	6	0.0	1	0.0	1
Total:										
Associate's	88.4	26,215	9.8	2,906	0.2	52	0.2	53	1.4	425
Bachelor's	75.6	41,812	23.3	12,891	0.5	289	0.2	124	0.4	202
Master's	84.7	23,746	14.2	3,966	1.0	280	0.1	20	0.0	7
Doctoral	95.9	8,984	3.3	312	0.8	73	0.0	2	0.0	0
Professional	63.9	745	27.0	314	8.8	103	0.0	0	0.3	3
Total	82.2	101,502	16.5	20,389	0.6	797	0.2	199	0.5	637

Tables 3.6 and 3.7 report results by credential level and 2-digit CIP code for non-GE programs. This analysis shows that:

- Rates of not passing at least one of the metrics are particularly high for professional programs in law (CIP 22, 19.6 percent of law programs representing 29.2 percent of enrollment in law programs), theology (CIP 39, 6.6 percent, 25.4 percent) and health (CIP 51, 9.7 percent, 18.6 percent). Recall that for graduate degrees, failure is almost exclusively due to the D/E metric, which would trigger the acknowledgement requirement.

TABLE 3.6—NUMBER AND PERCENT OF NON-GE TITLE IV ENROLLMENT IN PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2

	Credential level					
	Associate's	Bachelor's	Master's	Doctoral	Professional	Total
1: Agriculture & Related Sciences	0.8	1.2	0.0	0.0	0.0	1.0
3: Natural Resources And Conservation	0.0	1.3	1.8	0.0	0.0	1.2
4: Architecture And Related Services	0.0	0.0	2.7	0.0	0.0	0.7
5: Area & Group Studies	0.0	0.6	0.0	0.0	0.0	0.5
9: Communication	3.5	2.1	2.0	0.0	0.0	2.3
10: Communications Tech	8.1	2.9	0.0			5.9
11: Computer Sciences	1.5	0.1	0.0	0.0	0.0	0.6
12: Personal And Culinary Services	9.5	0.0	0.0			8.3
13: Education	16.6	2.7	1.8	4.3	0.0	4.4
14: Engineering	0.0	0.0	0.0	0.0	0.0	0.0
15: Engineering Tech	0.3	0.0	0.0	0.0		0.2
16: Foreign Languages	1.0	2.1	0.0	0.0	0.0	1.8
19: Family & Consumer Sciences	11.2	8.0	3.8	0.0	0.0	9.2
22: Legal Professions	7.8	9.8	3.6	29.6	29.2	20.4
23: English Language	1.1	5.7	3.9	0.0	0.0	4.8
24: Liberal Arts	14.0	2.8	0.6	0.0	0.0	10.8
25: Library Science	0.0	0.0	0.0	0.0	0.0	0.0
26: Biological & Biomedical Sciences	4.9	2.6	6.3	1.4	0.0	3.1
27: Mathematics And Statistics	0.0	0.0	0.0	0.0	0.0	0.0
28: Military Science		0.0	0.0			0.0
29: Military Tech	0.0	0.0	0.0			0.0
30: Multi/Interdisciplinary Studies	1.3	1.2	1.6	0.0	0.0	1.3
31: Parks & Rec	4.8	1.8	0.6	0.0	0.0	2.2
32: Basic Skills	0.0	0.0	0.0			0.0
33: Citizenship Activities		0.0	0.0			0.0
34: Health-Related Knowledge And Skills	0.0	0.0	0.0	0.0	0.0	0.0
35: Interpersonal And Social Skills		0.0	0.0			0.0
36: Leisure And Recreational Activities	0.0	0.0	0.0	0.0		0.0
37: Personal Awareness And Self-Improvement			0.0			0.0
38: Philosophy And Religious Studies	40.5	1.3	0.0	0.0	0.0	4.2
39: Theology And Religious Vocations	9.4	21.5	7.7	0.0	25.4	14.8
40: Physical Sciences	0.0	0.3	0.0	0.0	0.0	0.2
41: Science Technologies/Technicians	4.2	0.0	0.0	0.0		3.7
42: Psychology	10.8	6.4	31.5	25.3	13.6	10.5
43: Homeland Security	3.7	2.6	7.6	0.0	0.0	3.4
44: Public Admin & Social Services	23.4	5.1	6.9	0.0	0.0	9.0
45: Social Sciences	4.9	0.9	3.2	0.0	0.0	1.6
46: Construction Trades	0.0	0.0	0.0	0.0		0.0
47: Mechanic & Repair Tech	0.4	0.0				0.4
48: Precision Production	0.0	0.0	0.0			0.0
49: Transportation And Materials Moving	0.0	0.0	0.0	0.0		0.0
50: Visual And Performing Arts	6.4	12.7	21.6	1.9	0.0	11.6
51: Health Professions And Related Programs	6.2	1.7	5.8	20.1	18.6	5.8
52: Business	5.3	0.7	0.8	0.0	0.0	2.0
53: High School/Secondary Diplomas	0.0	0.0	0.0			0.0
54: History	0.0	0.8	12.2	0.0	0.0	1.6
60: Residency Programs			0.0	0.0	0.0	0.0
Total	8.6	2.6	4.7	11.0	21.3	5.4

TABLE 3.7—NUMBER AND PERCENT OF NON-GE PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2

	Credential level					
	Associate's	Bachelor's	Master's	Doctoral	Professional	Total
1: Agriculture & Related Sciences	0.1	0.7	0.0	0.0	0.0	0.3
3: Natural Resources And Conservation	0.0	0.4	0.3	0.0	0.0	0.3
4: Architecture And Related Services	0.0	0.0	0.8	0.0	0.0	0.3
5: Area & Group Studies	0.0	0.3	0.0	0.0	0.0	0.2
9: Communication	0.8	1.3	0.6	0.0	0.0	1.1
10: Communications Tech	2.2	2.4	0.0			2.1
11: Computer Sciences	0.4	0.1	0.0	0.0	0.0	0.2
12: Personal And Culinary Services	3.9	0.0	0.0			3.6
13: Education	3.5	0.8	0.7	0.1	0.0	1.0
14: Engineering	0.0	0.0	0.0	0.0	0.0	0.0
15: Engineering Tech	0.1	0.0	0.0	0.0	0.0	0.1
16: Foreign Languages	0.3	0.6	0.0	0.0	0.0	0.4
19: Family & Consumer Sciences	3.5	2.9	1.2	0.0	0.0	2.7
22: Legal Professions	1.0	1.4	0.4	14.3	19.6	5.0
23: English Language	0.4	1.9	1.0	0.0	0.0	1.4
24: Liberal Arts	15.3	2.1	0.4	0.0	0.0	8.1
25: Library Science	0.0	0.0	0.0	0.0	0.0	0.0
26: Biological & Biomedical Sciences	0.8	1.4	0.6	0.1	0.0	0.9

TABLE 3.7—NUMBER AND PERCENT OF NON-GE PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2—Continued

	Credential level					
	Associate's	Bachelor's	Master's	Doctoral	Professional	Total
27: Mathematics And Statistics	0.0	0.0	0.0	0.0	0.0	0.0
28: Military Science		0.0	0.0			0.0
29: Military Tech	0.0	0.0	0.0			0.0
30: Multi/Interdisciplinary Studies	1.1	0.7	0.4	0.0	0.0	0.6
31: Parks & Rec	0.8	1.3	0.3	0.0	0.0	1.0
32: Basic Skills	0.0	0.0	0.0			0.0
33: Citizenship Activities		0.0	0.0			0.0
34: Health-Related Knowledge And Skills	0.0	0.0	0.0	0.0	0.0	0.0
35: Interpersonal And Social Skills		0.0	0.0			0.0
36: Leisure And Recreational Activities	0.0	0.0	0.0	0.0		0.0
37: Personal Awareness And Self-Improvement			0.0			0.0
38: Philosophy And Religious Studies	2.1	0.2	0.0	0.0	0.0	0.2
39: Theology And Religious Vocations	2.0	2.5	2.6	0.0	6.6	2.4
40: Physical Sciences	0.0	0.0	0.0	0.0	0.0	0.0
41: Science Technologies/Technicians	0.6	0.0	0.0	0.0		0.4
42: Psychology	3.1	2.9	5.4	3.1	4.2	3.7
43: Homeland Security	0.8	2.2	1.3	0.0	0.0	1.3
44: Public Admin & Social Services	6.3	1.5	2.2	0.0	0.0	2.5
45: Social Sciences	0.5	0.5	0.2	0.0	0.0	0.4
46: Construction Trades	0.0	0.0	0.0	0.0		0.0
47: Mechanic & Repair Tech	0.2	0.0				0.2
48: Precision Production	0.0	0.0	0.0			0.0
49: Transportation And Materials Moving	0.0	0.0	0.0	0.0		0.0
50: Visual And Performing Arts	1.4	4.4	4.9	0.4	0.0	3.7
51: Health Professions And Related Programs	1.5	1.0	2.6	4.5	9.7	2.2
52: Business	1.4	0.3	0.2	0.0	0.0	0.6
53: High School/Secondary Diplomas	0.0	0.0	0.0			0.0
54: History	0.0	0.3	0.5	0.0	0.0	0.3
60: Residency Programs	0.0		0.0	0.0	0.0	0.0
Total	1.8	1.1	1.1	0.8	9.1	1.3

Results of GE Accountability for Programs Subject to the Gainful Employment Rule

This analysis is based on the 2022 PPD described in the ''Data Used in this RIA'' above. In this subsection, we examine the combined results of the GE accountability components of the proposed regulations for the 32,058 GE Programs. The analysis is primarily focused on GE metric results for a single year, though continued eligibility depends on performance in multiple years. The likelihood of repeated failure is discussed briefly below and is incorporated into the budget impact and cost-benefit analyses. Though programs with fewer than 30 completers in the cohort are not subject to the D/E and EP tests, we retain these programs in our analysis to provide a more complete view of program passage than if they were excluded.

Program-Level Results

Table 3.8 and 3.9 reports D/E and EP results by control and credential level for GE programs. This analysis shows that:

- 65.3 percent of enrollment is in the 4,100 GE programs for which rates can be calculated.
- 41.3 percent of enrollment is in 2,300 programs (7.1 percent of all GE programs) that meet the size threshold and would pass both the D/E measure and EP metrics.
- 24 percent of enrollment is in 1,800 programs (5.5 percent of all GE programs) that would fail at least one of the two metrics.
- Failure rates are significantly lower for public certificate programs (4.3 percent of enrollment is in failing programs) than for proprietary (50 percent of enrollment is in failing programs) or non-profit (43.6 percent of enrollment is in failing programs) certificate programs, though the latter represents a small share of overall enrollment. Certificate programs that fail typically fail the EP metric, rather than the D/E metric.
- Across all proprietary certificate and degree programs, 33.6 percent of enrollment is in programs that fail one of the two metrics, representing 22.1 percent of programs. Degree programs that fail typically fail the D/E metric, with only associate degree programs having a noticeable number of programs that fail the EP metric.

TABLE 3.8—NUMBER AND PERCENT OF TITLE IV ENROLLMENT IN GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Percent					Number				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public:										
UG Certificates	78.5	17.2	0.0	0.3	4.0	682,300	149,300	200	3,000	34,700
Post-BA Certs	93.0	7.0	0.0	0.0	0.0	11,800	900	0	0	0
Grad Certs	78.3	21.3	0.4	0.0	0.0	32,800	8,900	200	0	0
Total	78.7	17.2	0.0	0.3	3.8	726,900	159,200	300	3,000	34,700
Private, Nonprofit:										
UG Certificates	38.5	18.0	0.0	4.9	38.7	30,000	14,000	0	3,800	30,100
Post-BA Certs	96.2	3.8	0.0	0.0	0.0	7,600	300	0	0	0
Grad Certs	74.4	22.1	3.5	0.0	0.0	26,600	7,900	1,300	0	0

TABLE 3.8—NUMBER AND PERCENT OF TITLE IV ENROLLMENT IN GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL—Continued

	Percent					Number				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Total	52.8	18.3	1.0	3.1	24.8	64,200	22,200	1,300	3,800	30,100
Proprietary:										
UG Certificates	12.7	37.3	0.2	8.5	41.3	70,000	205,000	1,100	46,500	227,300
Associate's	15.5	46.2	19.3	14.4	4.5	50,600	151,100	63,200	47,200	14,700
Bachelor's	8.4	67.2	22.3	2.0	0.1	56,800	454,000	150,600	13,700	600
Post-BA Certs	37.8	62.2	0.0	0.0	0.0	300	500	0	0	0
Master's	6.8	75.2	17.0	0.9	0.0	16,400	180,500	40,800	2,200	0
Doctoral	26.0	58.8	15.1	0.0	0.0	14,100	31,800	8,200	0	0
Professional	34.9	14.5	50.7	0.0	0.0	4,200	1,800	6,100	0	0
Grad Certs	32.6	28.9	37.9	0.0	0.7	3,500	3,100	4,100	0	100
Total	11.5	55.0	14.7	5.9	13.0	215,900	1,027,800	274,200	109,600	242,700
Foreign Private:										
UG Certificates	100.0	0.0	0.0	0.0	0.0	100	0	0	0	0
Post-BA Certs	100.0	0.0	0.0	0.0	0.0	0	0	0	0	0
Grad Certs	15.8	0.0	0.0	84.2	0.0	200	0	0	1,300	0
Total	20.4	0.0	0.0	79.6	0.0	300	0	0	1,300	0
Foreign For-Profit:										
Master's	100.0	0.0	0.0	0.0	0.0	200	0	0	0	0
Doctoral	80.5	19.5	0.0	0.0	0.0	1,600	400	0	0	0
Professional	79.7	0.0	20.3	0.0	0.0	9,200	0	2,400	0	0
Total	80.0	2.8	17.2	0.0	0.0	11,000	400	2,400	0	0
Total:										
UG Certificates	52.2	24.6	0.1	3.6	19.5	782,400	368,400	1,300	53,300	292,100
Associate's	15.5	46.2	19.3	14.4	4.5	50,600	151,100	63,200	47,200	14,700
Bachelor's	8.4	67.2	22.3	2.0	0.1	56,800	454,000	150,600	13,700	600
Post-BA Certs	92.1	7.9	0.0	0.0	0.0	19,700	1,700	0	0	0
Master's	6.9	75.2	17.0	0.9	0.0	16,600	180,500	40,800	2,200	0
Doctoral	27.9	57.5	14.6	0.0	0.0	15,600	32,200	8,200	0	0
Professional	56.8	7.4	35.8	0.0	0.0	13,400	1,800	8,500	0	0
Grad Certs	70.3	22.2	6.1	1.4	0.1	63,100	19,900	5,500	1,300	100
Total	34.7	41.3	9.5	4.0	10.5	1,018,300	1,209,600	278,100	117,600	307,500

Note: Enrollment counts rounded to the nearest 100.

TABLE 3.9—NUMBER OF GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Number					Percent				
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public:										
UG Certificates	18,051	729	1	6	184	95.2	3.8	0.0	0.0	1.0
Post-BA Certs	865	7	0	0	0	99.2	0.8	0.0	0.0	0.0
Grad Certs	1,887	50	2	0	0	97.3	2.6	0.1	0.0	0.0
Total	20,803	786	3	6	184	95.5	3.6	0.0	0.0	0.8
Private, Nonprofit:										
UG Certificates	1,218	94	0	8	67	87.8	6.8	0.0	0.6	4.8
Post-BA Certs	625	4	0	0	0	99.4	0.6	0.0	0.0	0.0
Grad Certs	1,344	44	9	0	0	96.2	3.1	0.6	0.0	0.0
Total	3,187	142	9	8	67	93.4	4.2	0.3	0.2	2.0
Proprietary:										
UG Certificates	1,596	548	4	154	916	49.6	17.0	0.1	4.8	28.5
Associate's	1,135	339	98	79	69	66.0	19.7	5.7	4.6	4.0
Bachelor's	601	259	80	21	2	62.4	26.9	8.3	2.2	0.2
Post-BA Certs	48	4	0	0	0	92.3	7.7	0.0	0.0	0.0
Master's	282	148	39	9	0	59.0	31.0	8.2	1.9	0.0
Doctoral	80	30	12	0	0	65.6	24.6	9.8	0.0	0.0
Professional	23	5	4	0	0	71.9	15.6	12.5	0.0	0.0
Grad Certs	105	14	6	0	3	82.0	10.9	4.7	0.0	2.3
Total	3,870	1,347	243	263	990	57.6	20.1	3.6	3.9	14.7
Foreign Private:										
UG Certificates	28	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Post-BA Certs	27	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Grad Certs	76	0	0	1	0	98.7	0.0	0.0	1.3	0.0
Total	131	0	0	1	0	99.2	0.0	0.0	0.8	0.0
Foreign For-Profit:										
UG Certificates	1	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Master's	6	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Doctoral	3	1	0	0	0	75.0	25.0	0.0	0.0	0.0
Professional	5	0	2	0	0	71.4	0.0	28.6	0.0	0.0
Total	15	1	2	0	0	83.3	5.6	11.1	0.0	0.0
Total:										
UG Certificates	20,894	1,371	5	168	1,167	88.5	5.8	0.0	0.7	4.9

TABLE 3.9—NUMBER OF GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL—Continued

	Number					Percent				
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Associate's	1,135	339	98	79	69	66.0	19.7	5.7	4.6	4.0
Bachelor's	601	259	80	21	2	62.4	26.9	8.3	2.2	0.2
Post-BA Certs	1,565	15	0	0	0	99.1	0.9	0.0	0.0	0.0
Master's	288	148	39	9	0	59.5	30.6	8.1	1.9	0.0
Doctoral	83	31	12	0	0	65.9	24.6	9.5	0.0	0.0
Professional	28	5	6	0	0	71.8	12.8	15.4	0.0	0.0
Grad Certs	3,412	108	17	1	3	96.4	3.0	0.5	0.0	0.1
Total	28,006	2,276	257	278	1,241	87.4	7.1	0.8	0.9	3.9

Tables 3.10 and 3.11 reports the results by credential level and 2-digit CIP code. This analysis shows:

- Highest rate of failure is in Personal and Culinary Services (CIP2 12), where 76 percent of enrollment, representing 38 percent of undergraduate certificate programs in that field, have failing metrics. This is primarily due to failing the EP metric.
- In Health Professions and Related Programs (CIP2 51), where allied health, medical assisting, and medical administration are the primary specific fields, 26.2 percent of enrollment is in an undergraduate certificate program that fails at least one of the two metrics, representing 8.6 percent of programs.

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Table 3.10 - Percent of GE Title IV Enrollment in Programs Failing Either D/E or EP Metric, by CIP2 and Credential Level

	UG Certificates	Associate's	Bachelor's	Post-BA Certs	Master's	Doctoral	Professional	Grad Certs	Total
1: Agriculture & Related Sciences	1.6	0.0	0.0	0.0				0.0	1.5
3: Natural Resources And Conservation	0.0		13.1	0.0	0.0			0.0	9.1
4: Architecture And Related Services	0.0		0.0	0.0	0.0		0.0	0.0	0.0
5: Area & Group Studies	0.0			0.0				0.0	0.0
9: Communication	42.4	0.0	22.9	0.0	21.8			0.0	30.1
10: Communications Tech	10.4	39.6	61.9	0.0	88.9			0.0	36.3
11: Computer Sciences	5.6	9.7	3.6	0.0	4.5	0.0		0.0	5.2
12: Personal And Culinary Services	76.1	59.5	31.8	0.0	0.0	0.0	0.0	31.5	75.2
13: Education	7.3	74.5	75.5	0.0	14.1	0.8	0.0	3.4	25.1
14: Engineering	0.0	37.0	14.5	0.0	0.0			0.0	3.4
15: Engineering Tech	2.5	1.8	0.0	0.0	0.0			0.0	1.9
16: Foreign Languages	0.0		94.8	0.0				0.0	4.5
19: Family & Consumer Sciences	2.0	90.2	72.0	0.0	100.0	100.0		0.0	21.9
22: Legal Professions	3.3	55.9	32.3	0.0	0.0	0.0	61.0	24.2	26.9
23: English Language	57.4	96.6	87.4	0.0	98.2			0.0	66.0
24: Liberal Arts	3.8	0.0	0.0	0.0	0.0	0.0		0.0	3.5
25: Library Science	0.0		100.0	0.0				0.0	23.5
26: Biological & Biomedical Sciences	0.0	0.0	0.0	0.0	0.0	0.0		9.1	1.1
27: Mathematics And Statistics	0.0		0.0	0.0				0.0	0.0
28: Military Science	0.0	0.0	0.0					0.0	0.0
29: Military Tech	0.0	0.0	0.0		0.0			0.0	0.0
30: Multi/Interdisciplinary Studies	0.0	96.2	92.0	0.0	0.0			8.8	55.3
31: Parks & Rec	4.3	66.0	0.0	0.0	0.0	0.0		0.0	9.3
32: Basic Skills	41.8				0.0			0.0	41.4
33: Citizenship Activities	0.0								0.0
34: Health-Related Knowledge And Skills	0.0							0.0	0.0
36: Leisure And Recreational Activities	0.0				0.0				0.0
37: Personal Awareness	0.0			0.0				0.0	0.0
38: Philosophy And Religious Studies	0.0		0.0	0.0	0.0			0.0	0.0
39: Theology And Religious Vocations	50.6	0.0	94.2	0.0	90.0	0.0	0.0	0.0	56.1
40: Physical Sciences	0.0	0.0	0.0	0.0				0.0	0.0
41: Science Technologies/Technicians	0.0	0.0		0.0				0.0	0.0
42: Psychology	0.0	0.0	50.3	0.0	29.1	62.1		33.3	41.0
43: Homeland Security	3.3	54.3	21.9	0.0	19.2	66.5		0.0	21.8
44: Public Admin & Social Services	0.0	81.9	57.5	0.0	43.3	9.2		2.8	42.4
45: Social Sciences	0.0	0.0	25.4	0.0	64.5	0.0		0.0	18.0
46: Construction Trades	4.9	0.0						0.0	4.7
47: Mechanic & Repair Tech	5.1	9.6	0.0					0.0	5.5
48: Precision Production	4.1	0.0							4.0
49: Transportation And Materials Moving	2.4	0.0		0.0	0.0			0.0	2.3
50: Visual And Performing Arts	11.3	45.5	51.8	0.0	83.5		0.0	0.0	38.7
51: Health Professions And Related	26.2	36.0	25.6	0.0	24.0	3.3	36.7	16.6	27.1
52: Business	6.8	40.5	2.8	0.0	3.8	2.0	0.0	0.6	9.0
53: High School/Secondary Diplomas	0.0	0.0							0.0
54: History	0.0	0.0	36.4	0.0	0.0			0.0	20.3
60: Residency Programs	0.0			0.0				0.0	0.0
Total	23.2	38.3	24.4	0.0	17.9	14.6	35.8	7.6	24.0

Table 3.11 - Percent of GE Programs Failing Either D/E or EP Metric, by CIP2

	UG Certificates	Associate's	Bachelor's	Post-BA Certs	Master's	Doctoral	Professional	Grad Certs	Total
1: Agriculture & Related Sciences	0.3	0.0	0.0	0.0				0.0	0.2
3: Natural Resources And Conservation	0.0		20.0	0.0	0.0			0.0	0.7
4: Architecture And Related Services	0.0		0.0	0.0	0.0		0.0	0.0	0.0
5: Area & Group Studies	0.0			0.0				0.0	0.0
9: Communication	1.9	0.0	12.0	0.0	11.1			0.0	2.4
10: Communications Tech	1.3	13.0	29.2	0.0	33.3			0.0	4.2
11: Computer Sciences	0.9	6.0	1.8	0.0	2.4	0.0		0.0	1.3
12: Personal And Culinary Services	38.3	13.9	18.2	0.0	0.0	0.0	0.0	11.1	36.6
13: Education	1.8	10.0	18.2	0.0	6.3	4.3	0.0	0.4	1.4
14: Engineering	0.0	20.0	10.0	0.0	0.0			0.0	0.7
15: Engineering Tech	0.4	2.8	0.0	0.0	0.0			0.0	0.5
16: Foreign Languages	0.0		50.0	0.0				0.0	0.4
19: Family & Consumer Sciences	0.9	25.0	27.3	0.0	100.0	100.0		0.0	2.1
22: Legal Professions	0.6	19.7	12.5	0.0	0.0	0.0	25.0	3.8	4.0
23: English Language	8.6	20.0	36.4	0.0	50.0			0.0	7.9
24: Liberal Arts	1.1	0.0	0.0	0.0	0.0	0.0		0.0	0.9
25: Library Science	0.0		100.0	0.0				0.0	1.9
26: Biological & Biomedical Sciences	0.0	0.0	0.0	0.0	0.0	0.0		1.1	0.4
27: Mathematics And Statistics	0.0		0.0	0.0				0.0	0.0
28: Military Science	0.0	0.0	0.0					0.0	0.0
29: Military Tech	0.0	0.0	0.0		0.0			0.0	0.0
30: Multi/Interdisciplinary Studies	0.0	25.0	28.6	0.0	0.0			0.7	1.4
31: Parks & Rec	1.6	12.0	0.0	0.0	0.0	0.0		0.0	2.3
32: Basic Skills	5.4				0.0			0.0	5.1
33: Citizenship Activities	0.0								0.0
34: Health-Related Knowledge And Skills	0.0							0.0	0.0
35: Interpersonal And Social Skills								0.0	0.0
36: Leisure And Recreational Activities	0.0				0.0				0.0
37: Personal Awareness	0.0			0.0				0.0	0.0
38: Philosophy And Religious Studies	0.0		0.0	0.0	0.0			0.0	0.0
39: Theology And Religious Vocations	4.9	0.0	20.0	0.0	14.3	0.0	0.0	0.0	2.8
40: Physical Sciences	0.0	0.0	0.0	0.0				0.0	0.0
41: Science Technologies/Technicians	0.0	0.0		0.0				0.0	0.0
42: Psychology	0.0	0.0	28.6	0.0	21.1	26.7		1.4	4.7
43: Homeland Security	0.7	21.6	12.1	0.0	13.0	25.0		0.0	3.1
44: Public Admin & Social Services	0.0	40.0	21.4	0.0	15.8	28.6		1.1	3.1
45: Social Sciences	0.0	0.0	13.3	0.0	20.0	0.0		0.0	0.8
46: Construction Trades	1.2	0.0						0.0	1.2
47: Mechanic & Repair Tech	1.9	6.2	0.0	0.0				0.0	2.0
48: Precision Production	1.6	0.0							1.6
49: Transportation And Materials Moving	1.3	0.0		0.0	0.0			0.0	1.3
50: Visual And Performing Arts	1.5	17.6	22.4	0.0	38.5		0.0	0.0	5.5
51: Health Professions And Related	8.6	17.6	6.9	0.0	10.6	5.1	22.2	1.3	8.4
52: Business	1.5	14.6	5.2	0.0	4.3	4.3	0.0	0.2	2.5
53: High School/Secondary Diplomas	0.0	0.0							0.0
54: History	0.0	0.0	16.7	0.0	0.0			0.0	1.8
60: Residency Programs	0.0			0.0				0.0	0.0
Total	5.7	14.1	10.6	0.0	9.9	9.5	15.4	0.6	5.5

Program Ineligibility

For GE programs, Title IV ineligibility is triggered by two years of failing the same metric within a three-year period. Years of not meeting the n-size requirement are not counted towards those three years. The top panel of Table 3.12 shows the share of GE enrollment and programs in each result category in a second year as a function of the result in the first year, along with the rate of becoming ineligible. Failure rates are quite persistent, with failure in one year being highly predictive of failure in the next year, and thus ineligibility for title IV, HEA funds. Among programs that fail only the D/E metric in the first year, 58.4 percent of enrollment is in programs that also fail D/E in year 2 and would be ineligible for Title IV aid the following year. The comparable rates for programs that fail EP only or both D/E and EP in the first year are 91.2 and 88.8 percent, respectively. The share of programs (rather than enrollment in such programs) that become ineligible conditional on first year results is similar, as shown in the bottom panel of Table 3.12. These rates understate the share of programs that would ultimately become ineligible when a third year is considered.

Table 3.12. GE Program Performance Transition Between Years One and Two

Result in Year 1	Percent of Enrollment by Result in Year Two: No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Ineligible
No D/E or EP data	77.1	14.9	0.6	6.1	1.3	
Pass	4.0	90.6	2.0	3.3	0.2	
Fail D/E only	3.5	24.1	58.3	0.1	14.0	58.4
Fail both D/E and EP	6.5	4.6	0.8	79.9	8.1	88.8
Fail EP only	0.3	0.3	8.2	10.3	80.9	91.2

Result in Year 1	Percent of Programs by Result in Year Two: No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Ineligible
No D/E or EP data	95.5	3.0	0.1	1.2	0.2	
Pass	10.6	81.4	1.9	5.6	0.5	
Fail D/E only	13.6	16.3	52.7	0.4	17.1	53.1
Fail both D/E and EP	13.7	4.1	0.2	74.5	7.5	82.2
Fail EP only	2.2	1.4	7.2	17.7	71.5	89.2

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Institution-Level Aanalysis of GE Program Accountability Provisions

Many institutions have few programs that are subject to the accountability provisions of GE, either because they are nonproprietary institutions with relatively few certificate programs or because their programs tend to be too small in size to have published median debt or earnings measures. Characterizing the share of GE programs that have reported debt and earnings metrics that fail in particular postsecondary sectors can therefore give a distorted sense for the effect the rule might have on institutions in that sector. For example, a college (or group of colleges) might offer a single GE program that fails the rule and so appear to have 100 percent of its GE programs fail the rule. But if that program is a very small share of the institution's overall enrollment (or its title IV, HEA enrollment) then even if every student in that program were to stop enrolling in the institution—an unlikely scenario as discussed below—the effect on the institution(s) would be much less than would be implied by the 100 percent failure rate among its GE programs. To provide better context for evaluating the potential effect of the GE rule on institutions or sets of institutions, we describe the share of all title IV supported enrollment—including enrollment in both GE and non-GE programs—that is in a GE program and that fails a GE metric and, therefore, is at risk of losing title IV, HEA eligibility.[227] Again, this should not be viewed as an estimate of potential enrollment (or revenue) loss to the institution—in many cases the most likely impact of a program failing the GE metrics or losing eligibility is that students enroll in higher performing programs in the same institution.

Table 3.13 reports the distribution of institutions by share of enrollment that is in a failing GE program, by control and institution type. It shows that 93 percent of public institutions and 97 percent of non-profit institutions have no enrollment in GE programs that fail the GE metric. This rate is much lower—42 percent—for proprietary institutions, where all types of credential programs are covered by GE accountability and failure rates tend to be higher.

TABLE 3.13—DISTRIBUTION OF INSTITUTIONS BY SHARE OF ENROLLMENT THAT FAILS GE ACCOUNTABILITY, BY CONTROL AND INSTITUTION TYPE (ALL INSTITUTIONS)

	Share of institutional enrollment in failing GE programs: Total	0%	0–5%	5–10%	10–20%	20–40%	40–99%	100%
Public:								
Less-Than 2-Year	561	470	23	13	26	23	5	1
2-Year	691	649	35	3	1	2	1	0
4-Year or Above	560	557	2	1	0	0	0	0
Total	1,812	1,676	60	17	27	25	6	1
Private, Nonprofit:								
Less-Than 2-Year	113	92	1	0	1	3	11	5
2-Year	110	101	2	0	2	2	2	1
4-Year or Above	1,350	1,332	10	4	1	1	1	1

[227] Note that these statistics still do not fully capture the financial impact of GE on institutions. A complete analysis would account for the share of institutional revenue accounted for by title IV, HEA students, and the extent to which students in programs that fail GE will unenroll from the institutions entirely (vs. transferring to a passing program at the same institution). The measures here are best viewed as a proxy for the share of Federal title IV, HEA revenue at an institution that is potentially at risk due to the GE accountability provisions.

TABLE 3.13—DISTRIBUTION OF INSTITUTIONS BY SHARE OF ENROLLMENT THAT FAILS GE ACCOUNTABILITY, BY CONTROL AND INSTITUTION TYPE (ALL INSTITUTIONS)—Continued

	Share of institutional enrollment in failing GE programs							
	Total	0%	0–5%	5–10%	10–20%	20–40%	40–99%	100%
Total	1,573	1,525	13	4	4	6	14	7
Proprietary:								
Less-Than 2-Year	1,274	499	6	8	24	38	208	491
2-Year	119	67	1	6	4	14	24	3
4-Year or Above	101	62	0	3	7	10	16	3
Total	1,494	628	7	17	35	62	248	497
Total:								
Less-Than 2-Year	1,948	1,061	30	21	51	64	224	497
2-Year	920	817	38	9	7	18	27	4
4-Year or Above	2,011	1,951	12	8	8	11	17	4
Total	4,879	3,829	80	38	66	93	268	505

Very few public community or technical colleges (CCs) have considerable enrollment in programs that would fail GE. Only 40 (6 percent) of the 690 predominant 2-year public colleges have any of their enrollment in certificate programs that would fail, and only 30 (5 percent) of the 560 predominantly less than 2-year technical colleges have more than 20% of enrollment that does. The share of enrollment in failing GE programs for HBCUs, TCCUs, and other minority-serving institutions is even smaller, as shown in Table 3.14. At HBCUs, only one college out of 100 has more than 5 percent of enrollment in failing programs; across all HBCUs, only 5 programs at 4 schools fail. TCCUs have no failing programs, only 5 (1 percent) of Hispanic-serving institutions have more than 10 percent of enrollment in failing programs.[228] We conducted a similar analysis excluding institutions that do not have any GE programs. The patterns are similar.

TABLE 3.14—DISTRIBUTION OF INSTITUTIONS BY SHARE OF ENROLLMENT THAT FAILS GE ACCOUNTABILITY, BY SPECIAL MISSION TYPE

	Share of institutional enrollment in failing GE programs						
	Total	0%	0–5%	5–10%	10–20%	20–40%	40–99%
		N of Institutions					
HBCU	100	96	3	1	0	0	0
TCCU	35	35	0	0	0	0	0
HSI	446	417	22	2	1	2	2
All Other Non-FP MSI	158	144	3	3	4	4	0
Total	739	692	28	6	5	6	2

As noted above, these estimates cannot assess the impact of the GE provisions on total enrollment at these institutions. Especially at institutions with diverse program offerings, many students in failing programs can be expected to transfer to other non-failing programs within the institution (as opposed to exiting the institution). Moreover, many institutions are likely to admit additional enrollment into their programs from failing programs at other (especially for-profit) institutions. We quantify the magnitude of this enrollment shift and revisit the implications for overall institution-level enrollment effects in a later section.

Regulation Targets Low-Performing GE Programs

The Department conducted an analysis on which specific GE programs fail the metrics. The analysis concludes that the metrics target programs where students earn little, borrow more, and default at higher rates on their student loans than similar programs providing the same credential.

Table 3.15 reports the average program-level cohort default rate for GE programs, separately by result, control, and credential level. Programs are weighted by their average title IV, HEA enrollment in AY 2016 and 2017 to better characterize the outcomes experienced by students. The overall 3-year program default rate is 12.9 percent but is higher for certificate programs and for programs offered by proprietary schools. The average default rate is higher for programs that fail the EP threshold than for programs that fail the D/E metric, despite debt being lower for the former. This is because even low levels of debt are difficult to repay when earnings are very low. Programs that pass the metrics, either with data or without, have lower default rates than those that fail.

[228] The number of Hispanic Serving Institutions reported here differs slightly from the current eligibility list, as the 2022 PPD uses designations from 2021. The number of HBCUs and TCCUs is the same in both sources, however.

TABLE 3.15—AVERAGE PROGRAM COHORT DEFAULT RATE BY RESULT, OVERALL AND BY CONTROL, AND CREDENTIAL LEVEL (ENROLLMENT-WEIGHTED)

	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Total
Public:						
UG Certificates	16.6	17.5	11.1	20.4	19.9	16.9
Post-BA Certs	2.3	2.4				2.3
Grad Certs	2.6	2.2	0.0			2.5
Total	15.8	16.5	6.2	20.4	19.9	16.1
Private, Nonprofit:						
UG Certificates	9.7	9.6		16.4	14.4	12.0
Post-BA Certs	2.9	1.2				2.8
Grad Certs	2.7	1.9	0.3			2.4
Total	6.0	6.7	0.3	16.4	14.4	8.7
Proprietary:						
UG Certificates	14.8	14.0	16.9	14.9	14.1	14.2
Associate's	14.4	13.0	17.8	19.8	16.4	15.3
Bachelor's	13.8	11.6	14.4	14.8	0.0	12.4
Post-BA Certs	26.4	13.2				16.9
Master's	3.9	3.9	5.3	4.5		4.1
Doctoral	4.1	4.5	4.6			4.4
Professional	1.0	0.0	0.7			0.7
Grad Certs	1.4	4.2	5.5			3.9
Total	12.3	10.6	13.1	16.8	14.2	12.0
Foreign Private:						
UG Certificates	0.0					0.0
Post-BA Certs	12.5					12.5
Grad Certs	5.2			0.0		0.2
Total	3.6			0.0		0.2
Foreign For-Profit:						
Master's	0.0					0.0
Doctoral	0.5	5.3				1.4
Professional	1.3		1.3			1.3
Total	1.1	5.3	1.3			1.3
Total:						
UG Certificates	16.2	15.1	16.1	15.3	14.7	15.5
Associate's	14.4	13.0	17.8	19.8	16.4	15.3
Bachelor's	13.8	11.6	14.4	14.8	0.0	12.4
Post-BA Certs	2.9	5.4				3.2
Master's	3.9	3.9	5.3	4.5		4.1
Doctoral	3.7	4.5	4.6			4.3
Professional	1.2	0.0	0.8			1.0
Grad Certs	2.6	2.4	4.2	0.0		2.6
Total	14.1	11.3	12.9	16.7	14.7	12.9

To better understand the specific types of programs that underpin the aggregate patterns described above, Table 3.16 lists the 20 most common types of programs (the combination of field and credential level) by enrollment count in the 2022 PPD. The programs with the highest enrollments are undergraduate certificate programs in cosmetology, allied health, liberal arts, and practical nursing, along with bachelor's programs in business and nursing. These 20 most common types of programs represent more than half of all enrollments in GE programs. Table 3.17 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students completing a program), the average annual D/E rate, and the average cohort default rate (weighted by the number of students completing a program). This shows quite a bit of variability in debt, loan service, earnings, and default across different types of programs.

TABLE 3.16—GE PROGRAMS WITH THE MOST STUDENTS, BY CIP AND CREDENTIAL LEVEL

	Number of programs	Percent of all programs	Number of students	Percent of students at all programs
Field of Study (Ordered by All-Sector Enrollment):				
1204—Cosmetology & Personal Grooming—UG Certificates	1,267	4.0	191,600	6.5
5202—Business Administration—Bachelor's	72	0.2	149,000	5.1
5108—Allied Health (Medical Assisting)—UG Certificates	895	2.9	147,100	5.0
2401—Liberal Arts—UG Certificates	345	1.1	140,900	4.8
5139—Practical Nursing—UG Certificates	1,032	3.3	130,900	4.5
5107—Health & Medical Administrative Services—UG Certificates	910	2.9	83,500	2.8
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Bachelor's	56	0.2	75,600	2.6
4706—Vehicle Maintenance & Repair—UG Certificates	722	2.3	75,100	2.6
4301—Criminal Justice & Corrections—Bachelor's	47	0.2	55,500	1.9
5202—Business Administration—Master's	46	0.1	55,400	1.9
4805—Precision Metal Working—UG Certificates	761	2.4	49,000	1.7
5109—Allied Health (Diagnostic & Treatment)—UG Certificates	725	2.3	47,000	1.6
5108—Allied Health (Medical Assisting)—Associate's	142	0.5	43,800	1.5
5107—Health & Medical Administrative Services—Bachelor's	46	0.1	42,100	1.4
5202—Business Administration—Associate's	89	0.3	39,600	1.4
5107—Health & Medical Administrative Services—Associate's	128	0.4	38,700	1.3

TABLE 3.16—GE PROGRAMS WITH THE MOST STUDENTS, BY CIP AND CREDENTIAL LEVEL—Continued

	Number of programs	Percent of all programs	Number of students	Percent of students at all programs
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Master's	20	0.1	37,800	1.3
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Associate's	92	0.3	36,300	1.2
5202—Business Administration—UG Certificates	573	1.8	34,300	1.2
5106—Dental Support—UG Certificates	432	1.4	33,100	1.1
All Other Programs	22,920	73.2	1,424,900	48.6

TABLE 3.17—ANNUAL LOAN PAYMENT, EARNINGS, D/E RATE, COHORT DEFAULT RATE BY PROGRAM TYPE (ENROLLMENT-WEIGHTED)

	Annual loan payment	Median 2018–19 earnings (in 2019 $) of 3 yrs after graduation	Average annual DTE rate	Cohort default rate
Field of Study (Ordered by All-Sector Enrollment):				
1204—Cosmetology & Personal Grooming—UG Certificates	1,004	16,822	6.4	13.7
5202—Business Administration—Bachelor's	2,711	47,956	5.8	14.1
5108—Allied Health (Medical Assisting)—UG Certificates	947	24,000	4.2	16.6
2401—Liberal Arts—UG Certificates	99	29,894	0.3	16.4
5139—Practical Nursing—UG Certificates	1,075	39,273	3.5	10.2
5107—Health & Medical Administrative Services—UG Certificates	1,107	23,231	5.5	15.0
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Bachelor's	1,948	72,449	2.8	3.8
4706—Vehicle Maintenance & Repair—UG Certificates	1,410	36,260	4.1	19.5
4301—Criminal Justice & Corrections—Bachelor's	2,720	37,537	7.6	17.1
5202—Business Administration—Master's	3,725	58,204	6.6	4.1
4805—Precision Metal Working—UG Certificates	642	34,456	2.1	26.6
5109—Allied Health (Diagnostic & Treatment)—UG Certificates	564	41,511	2.1	11.7
5108—Allied Health (Medical Assisting)—Associate's	2,275	30,226	7.6	12.2
5107—Health & Medical Administrative Services—Bachelor's	3,292	37,028	9.2	10.9
5202—Business Administration—Associate's	2,532	32,427	8.3	21.7
5107—Health & Medical Administrative Services—Associate's	2,721	26,600	10.4	14.0
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Master's	3,852	96,798	4.0	2.6
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Associate's	2,535	54,352	4.7	6.9
5202—Business Administration—UG Certificates	705	35,816	1.6	20.1
5106—Dental Support—UG Certificates	1,024	24,502	4.4	14.0
All Other Programs	3,105	42,273	8.0	12.1

Table 3.18 lists the most frequent types of failing GE programs (by enrollment in failing programs). Failing programs are disproportionately in a small number of types of programs. Twenty-two percent of enrollment is in UG Certificate Cosmetology programs alone, reflecting both high enrollment and high failure rates. Another 23 percent are in UG Certificate programs in Health/Medical administration and assisting, dental support, and massage, reflecting large enrollment and moderate failure rates. These 20 categories account for 71 percent of all enrollments in programs that fail at least one GE metric. Table 3.19 provides the average program annual loan payment, the average program earnings, and the average default rate (all weighted by title IV, HEA enrollment) for the most frequent types (by field and credential) of GE programs that fail at least one GE metric (by enrollment count), separately for failing and passing programs. Within each type of program, failing programs have much higher loan payments, lower earnings, and higher default rates than programs that pass the GE metrics. This demonstrates that higher-performing GE programs exist even within the same field and credential level as programs that fail GE.

TABLE 3.18—FAILING GE PROGRAMS WITH THE MOST STUDENTS, BY GE RESULT, CIP AND CREDENTIAL LEVEL

	Number of failing programs	Percent of failing programs	Number of students	Percent of students at failing programs
1204—Cosmetology & Personal Grooming—UG Certificates	639	36.2	154,100	21.9
5108—Allied Health (Medical Assisting)—UG Certificates	155	8.8	70,300	10.0
5107—Health & Medical Administrative Services—UG Certificates	102	5.8	32,400	4.6
5107—Health & Medical Administrative Services—Associate's	37	2.1	28,800	4.1
5107—Health & Medical Administrative Services—Bachelor's	5	0.3	26,400	3.7
3017—Behavioral Sciences—Bachelor's	2	0.1	20,100	2.9
5202—Business Administration—Associate's	23	1.3	19,000	2.7
5108—Allied Health (Medical Assisting)—Associate's	38	2.2	17,600	2.5
1312—Teacher Education & Professional Development, Specific Levels & Methods—Bachelor's	2	0.1	17,500	2.5
5115—Mental & Social Health Services & Allied Professions—Master's	5	0.3	15,400	2.2
5106—Dental Support—UG Certificates	60	3.4	13,400	1.9
5135—Somatic Bodywork—UG Certificates	95	5.4	13,400	1.9

TABLE 3.18—FAILING GE PROGRAMS WITH THE MOST STUDENTS, BY GE RESULT, CIP AND CREDENTIAL LEVEL—Continued

	Number of failing programs	Percent of failing programs	Number of students	Percent of students at failing programs
4301—Criminal Justice & Corrections—Bachelor's	7	0.4	13,100	1.9
4400—Human Services, General—Bachelor's	2	0.1	12,100	1.7
4301—Criminal Justice & Corrections—Associate's	16	0.9	11,700	1.7
4201—Psychology—Bachelor's	4	0.2	10,200	1.5
1205—Culinary Arts—UG Certificates	21	1.2	5,800	0.8
2301—English Language & Literature, General—UG Certificates	8	0.5	5,600	0.8
5139—Practical Nursing—UG Certificates	27	1.5	5,500	0.8
5204—Business Operations—UG Certificates	33	1.9	5,400	0.8
All Other Programs	485	27.5	205,500	29.2
Total	1,766	100.00	703,300	100.0

Note: Student counts rounded to the nearest 100.

3.19: Annual loan payment, earnings, D/E rate, default rate among top types of failing GE programs

	Annual Loan Payment		Earnings		Default Rate (Ever)	
	Passing	Failing	Passing	Failing	Passing	Failing
Field of Study & Level (Ordered by Failing Program Enrollment)						
1204 - Cosmetology & Personal Grooming - UG Certificates	647.7	1,045.4	27,368.7	16,637.0	16.3	13.2
5108 - Allied Health (Medical Assisting) - UG Certificates	823.6	1,025.7	27,340.2	22,434.5	16.7	16.5
5107 - Health & Medical Administrative Services - UG Certificates	976.3	1,229.5	27,652.3	20,229.7	14.6	15.4
5107 - Health & Medical Administrative Services - Associate's	2,250.0	2,857.4	31,410.0	25,596.7	9.5	15.5
5107 - Health & Medical Administrative Services - Bachelor's	2,960.3	3,482.3	43,499.7	34,118.7	10.4	11.2
3017 - Behavioral Sciences - Bachelor's	.	3,499.3	.	29,512.7	0.0	16.5
5202 - Business Administration - Associate's	2,304.5	2,762.1	37,887.8	27,280.5	19.6	23.9
5108 - Allied Health (Medical Assisting) - Associate's	2,170.3	2,425.6	34,991.8	23,935.6	9.6	16.0
1312 - Teacher Education, Specific Levels & Methods - Bachelor's	3,458.0	3,121.2	36,596.3	31,081.2	9.2	11.0
5115 - Mental & Social Health Services & Allied - Master's	5,305.3	7,096.9	49,712.0	42,604.7	4.5	6.1
5106 - Dental Support - UG Certificates	992.3	1,050.4	27,180.3	22,894.8	12.9	15.3
5135 - Somatic Bodywork - UG Certificates	682.2	948.1	26,077.6	19,245.8	13.8	13.2
4301 - Criminal Justice & Corrections - Bachelor's	2,465.7	3,527.6	39,218.8	32,371.9	15.4	22.3
4400 - Human Services, General - Bachelor's	2,493.8	3,903.3	33,323.4	32,788.8	14.3	14.9
4301 - Criminal Justice & Corrections - Associate's	1,516.5	2,626.3	33,479.0	28,409.6	18.7	22.1
4201 - Psychology - Bachelor's	2,068.4	3,333.3	36,641.7	28,865.8	11.1	17.4
1205 - Culinary Arts - UG Certificates	582.1	529.7	27,544.3	11,584.1	24.4	10.0
2301 - English Language & Literature, General - UG Certificates	2,399.3	0.0	.	19,361.7	35.0	6.0
5139 - Practical Nursing - UG Certificates	1,085.8	864.4	40,891.3	17,406.6	10.0	14.2
5204 - Business Operations - UG Certificates	507.5	624.0	28,985.0	17,896.7	13.5	16.0
All Other Programs	2,404.9	4,037.5	52,545.8	29,918.2	12.1	12.7

Student Demographic Analysis

Methodology for Student Demographic Analysis

The Department conducted analyses of the 2022 PPD to assess the role of student demographics as a factor in program performance. Our analysis demonstrates that GE programs that fail the metrics have particularly bad outcomes that are not explained by student demographics alone. We examined the demographic composition of program enrollment, comparing the composition of programs that pass, fail, or did not have data. We also conducted regression analysis, which permits us to hold constant several factors at once. This analysis focuses on GE programs since non-GE programs are not at risk of becoming ineligible for title IV, HEA aid.[229]

For the race and ethnicity variables, we used the proportion of individuals in each race and ethnicity category among all completers of each certificate or degree reported in the IPEDS 2016 and 2017 Completions Surveys.[230] Race and ethnicity is not available for only title IV, HEA recipients, so we rely on information for all (including non-title IV, HEA student) completers instead from IPEDS. We construct four race/ethnicity variables:

- Percent Black
- Percent Hispanic
- Percent Asian
- Percent non-White, which also includes individuals with more than one race. Note that this is not mutually exclusive with the other three race/ethnicity categories.

We aggregated the number of completions in each race/ethnicity category reported for each program in IPEDS to the corresponding GE program definition of six-digit OPEID, CIP code, and credential level. While D/E and EP rates measure only the outcomes of students who completed a program and received title IV, HEA program funds, IPEDS completions data include both title IV, HEA graduates and non-title IV, HEA graduates. Race and ethnicity data is not available separately for title IV, HEA completers. We believe the IPEDS data provides a reasonable approximation of the proportion, by race and ethnicity, of title IV, HEA graduates completing GE programs. We determined percent of each race and ethnicity category for 25,278 of the 32,058 programs. Many smaller programs could not be matched primarily because, as stated above, IPEDS and NSLDS use different program categorization systems, and the two sources at times are not sufficiently consistent to match data at the GE program-level. Nonetheless, we do not believe this will substantially affect our results since programs that do not match are less likely to meet the n-size criteria and thus would be likely excluded from our analysis of program performance.

Percent Pell for this analysis is the percentage of title IV, HEA completers during award years 15, 16, and 17 who received a Pell Grant at any time in their academic career. Because Pell status is being used as a proxy for socioeconomic background, we counted students if they had received a Pell Grant at any time in

[229] We conducted the regression analysis discussed below for non-GE programs as well. Our conclusions about the relative contribution of demographic factors in explaining program performance on the D/E and EP metrics is similar for non-GE programs as for GE programs.

[230] Specifically, the C2016A and C2017A datasets available from the IPEDS data center. These cover the 2015–16 and 2016–17 academic years (July 1 to June 30).

their academic career, even if they did not receive it for enrollment in the program. For instance, students that received Pell at their initial undergraduate institution but not at another institution they attended later would be considered a Pell Grant recipient at both institutions.

Several other background variables were collected from students' Free Application for Federal Student Aid (FAFSA) form. For all students receiving title IV, HEA aid in award years 15, 16, and 17, the Department matched their enrollment records to their latest FAFSA filed associated with their first award year in the program in which they were enrolled. First-generation status, described below, is taken from students earliest received FAFSA. From these, the Department constructed the following:

- Percent of students that are male.
- Percent of students that are first-generation, defined as those who indicated on the FAFSA not having a parent that had attended college. Children whose parents completed college are more likely to attend and complete college.
- Average family income in 2019 dollars. For dependent students, this includes parental income and the students' own income. For independent students, it includes the student's own income and spousal income.
- Average expected family contribution. We consider EFC as an indicator of socioeconomic status because EFC is calculated based on household income, other resources, and family size.
- Average age at time of FAFSA filing.
- Percent of students aged 24 or older at time of FAFSA filing.
- Share of students that are independent. Independent status is determined by a number of factors, including age, marital status, having dependents, and veteran status.
- Median student income prior to program enrollment among students whose income is greater than or equal to three-quarters of a year of earnings at Federal minimum wage. We only compute this variable for programs where at least 30 students meet this requirement, this variable should be viewed as a rough indicator of students' financial position prior to program entry. The average percentage of enrollees covered by this variable is 57.6 across all programs.

Based on these variables, we determined the composition of over 23,907 of the 32,058 programs in our data, though some demographic variables have more non-missing observations. Unless otherwise stated, our demographic analysis treats programs (rather than students) as the unit of analysis. The analysis, therefore, does not weight programs (and their student characteristics) by enrollment.

Table 3.20 provides program-level descriptive statistics for these demographic variables in the GE program dataset. The typical (median) program has 6 percent completers that are Black, 6 percent Hispanic, 0 percent Asian (program mean is 3 percent), and 38 percent non-White. At the median program, sixty-one percent are independent, half are over the age 24, and 31 percent are male. Half are first-generation college students and 77 percent have ever received a Pell Grant. Average family income at time of first FAFSA filing is $38,000 and the typical student who is attached to the labor force earns $29,900 before enrolling in the program.

TABLE 3.20—DESCRIPTIVE STATISTICS OF THE DEMOGRAPHIC VARIABLES

	Programs	Median	Average	Std. deviation
Share T4 Completers First Gen	24,199	50	49	34
Share T4 Completers Ever Pell	24,199	77	67	36
Share T4 Completers Out-of-State	24,199	0	16	30
Share of T4 Completers Male	24,199	31	42	41
Share of T4 Completers Age 24+	24,199	50	51	37
Share T4 Completers Independent	24,199	61	58	36
Share All Completions Non-White	25,278	38	43	30
Share All Completions Black	25,278	6	14	20
Share All Completions Hispanic	25,278	6	15	23
Share All Completions Asian	25,278	0	3	9
Age at Time of FAFSA	23,907	26	28	8
FAFSA Family Income	23,907	38,137	47,726	45,433
Median Student Pre-Inc	17,599	29,908	38,585	32,806

Student Demographics Descriptive Analysis

Table 3.21 reports average demographic characteristics of GE programs separately by GE result. Programs that fail at least one GE metric have a higher share of students that are female, higher share of students that are Black or Hispanic, lower student and family income, and higher share of students that have ever received the Pell Grant. Average student age and dependency status is similar for passing and failing programs.

TABLE 3.21—DEMOGRAPHIC SHARES BY RESULT

	All	Passing	Fail (any)	Fails D/E	Fails EP
Share TIV Completers First Gen	49	48	61	55	62
Share TIV Completers Ever Pell	67	66	81	74	83
Share TIV Completers Out-of-State	16	15	20	39	15
Share of TIV Completers Male	42	44	22	28	20
Share of TIV Completers Age 24+	51	51	49	57	45
Share TIV Completers Independent	58	58	59	66	56
Share All Completions Non-White	43	41	58	58	57
Share All Completions Black	14	13	21	25	20

TABLE 3.21—DEMOGRAPHIC SHARES BY RESULT—Continued

	All	Passing	Fail (any)	Fails D/E	Fails EP
Share All Completions Hispanic	15	15	25	18	26
Share All Completions Asian	3	3	3	2	4
Age at Time of FAFSA	28	28	27	29	27
FAFSA Family Income	47,700	48,700	35,100	41,000	33,300
Median Student Pre-Inc	38,600	39,600	29,100	34,200	27,200

Note: Income values rounded to the nearest 100.

Student Demographics Regression Analysis

One limitation of the descriptive tabulations presented above is that it is difficult to determine which factors, whether they be demographics or program characteristics, explain the higher failure rate of programs serving certain groups of students. To further examine the relationship between student demographics and program results under the proposed regulations, we analyzed the degree to which specific demographic characteristics might be associated with a program's annual D/E rate and EP, while holding other characteristics constant.

For this analysis, the Department estimated the parameters of linear regression models (OLS) with annual debt-to-earnings or the earnings premium as the dependent (outcome) variables and indicators of student, program, and institutional characteristics as independent variables.[231] The independent demographic variables included in the regression analysis are: share of students in different race and ethnicity categories; share of students ever receiving Pell Grants; share of students that are male; share of students that are first-generation college students; share of students that are independent; and average family income from student's FAFSA. Program and institutional characteristics include credential level and control (public, private non-profit, and proprietary). In some specifications we include institution fixed effects and omit control. When used with program-level data, institutional fixed effects control for any factors that differ between institutions but are common among programs in the same institution, such as institutional leadership, pricing strategy, and state or local factors.

Table 3.22 reports estimates from the D/E rate regressions described above, with each column representing a different regression model that includes different sets of independent variables. Comparing the R-squared across different columns demonstrates the degree to which different factors explain variation in the outcome. The first three columns quantify the extent to which variation in D/E rates are accounted for by program and institutional characteristics. The institutional control alone (column 1) explains 15 percent of the variation in D/E and adding credential level increases the R-squared to 23 percent (column 2). D/E rates are 3.7 to 3.9 percentage points higher for private non-profit and for-profit institutions than public institutions (the omitted baseline category) after controlling for credential level. This likely reflects the much higher tuition prices charged by private institutions, which results in higher debt service. Graduate credential levels also have much higher debt-to-earnings ratios than undergraduate credentials, reflecting the typically higher tuition costs associated with graduate programs.

Almost all programs are in institutions with multiple GE programs, so column 3 includes institution fixed effects in place of indicators for control.[232] Credential level and institution together account for 69 percent of the variation in D/E rates across programs. To illustrate how much more of the variation in outcomes is accounted for by student characteristics, column 4 adds the demographic characteristics on top of the model with credential level and institution effects. Doing so only slightly increases the model's ability to account for variation in D/E, lifting the R-squared to 71 percent. This specification effectively compares programs with more Pell students to those with fewer Pell students within the same institution and same credential level, while also controlling for the other independent variables listed. Demographic characteristics, therefore, appear to explain little of the variation in D/E rates across programs beyond what can be predicted by institutional characteristics and program credential level. Evidently, institution- and program-level factors, which could include such things as institutional performance and decisions about institutional pricing along with other factors, are much more important.[233] The final two columns report similar models, but weighting by average title IV, HEA enrollment, and the results are qualitatively similar.

TABLE 3.22—REGRESSION ANALYSIS OF THE DEMOGRAPHIC VARIABLES, GE PROGRAMS, OUTCOME: D/E

	1	2	3	4	5	6
Private, Nonprofit	4.367 (0.898)	3.939 (0.947)				
Proprietary	4.797 (0.109)	3.685 (0.102)				
Credential Level:						
UG Certificates		−2.162 (0.205)	−2.446 (0.585)	−3.973 (0.602)	−1.096 (0.636)	−5.005 (0.586)
Associate's		0.065 (0.250)	0.298 (0.433)	−0.617 (0.413)	1.344 (0.629)	−0.926 (0.418)
Master's		2.850 (0.747)	1.541 (0.575)	1.252 (0.469)	0.991 (0.704)	1.593 (0.563)

[231] Though not shown below, we have conducted parallel regression analysis with binary indicators for whether the program fails the D/E metric and whether it fails the EP metric as the outcomes. Results are qualitatively similar to those reported here using continuous outcomes, though the amount of variation in these binary outcomes that demographics explain is even more muted than that reported here.

[232] Only 4 percent of GE programs are the only GE program within the institution. The median number of programs within an institution is 18.

[233] The patterns by race are broadly similar to what was found in analysis of the 2014 final rule. The coefficient on % Black in the final column suggests that a 10-percentage point increase in the percent of students that are black is associated with a 0.15 higher debt-to-earnings ratio, holding institution, credential level, and the other demographic factors listed constant. Analysis of the prior rule found an increase of 0.19, though the set of controls is not the same.

TABLE 3.22—REGRESSION ANALYSIS OF THE DEMOGRAPHIC VARIABLES, GE PROGRAMS, OUTCOME: D/E—Continued

	1	2	3	4	5	6
Doctoral		4.883 (0.795)	3.811 (1.054)	5.599 (1.008)	3.803 (1.397)	7.716 (1.189)
Professional		12.510 (3.678)	5.828 (0.998)	5.616 (1.365)	6.711 (0.837)	8.627 (1.540)
Grad Certs		0.558 (0.697)	1.408 (1.702)	0.831 (1.639)	4.573 (2.536)	4.517 (2.376)
% Black				0.015 (0.009)		0.032 (0.016)
% Hispanic				−0.013 (0.011)		−0.030 (0.017)
% Asian				−0.056 (0.028)		−0.159 (0.043)
% Male				−0.015 (0.002)		−0.029 (0.004)
% Ever Pell				0.002 (0.011)		0.044 (0.016)
% First Generation				−0.001 (0.010)		−0.021 (0.016)
% Independent				−0.005 (0.006)		−0.005 (0.008)
FAFSA Family Income ($1,000)				−0.055 (0.013)		−0.088 (0.014)
Intercept	1.260 (0.064)	3.290 (0.216)	6.328 (0.456)	10.787 (1.594)	6.223 (0.413)	12.187 (1.968)
R-squared	0.15	0.23	0.69	0.71	0.61	0.71

Notes: Specifications 3 to 6 include fixed effects for each six-digit OPEID number. Bachelor's degree and public are the omitted categories for credential type and control, respectively. Columns 5 and 6 weight programs by average title IV enrollment in AY16 and AY17.

Table 3.23 reports estimates from identical regression models, but instead using EP as the outcome. Again, each column represents a different regression model that includes different sets of independent variables. Program and institutional characteristics still matter greatly to earnings outcomes. Institutional effects and credential level together explain 77 percent of the variation in program-level earnings outcomes (column 3). Adding demographic variables explains an additional 7 percent of the variation in program-level earnings (column 4). Note that the estimated regression coefficients will likely overstate the effect of the baseline characteristics on outcomes if these characteristics are correlated with differences in program quality not captured by the crude institution and program characteristics included in the regression.

TABLE 3.23—REGRESSION ANALYSIS OF THE DEMOGRAPHIC VARIABLES, GE PROGRAMS, OUTCOME: EP ($1,000S)

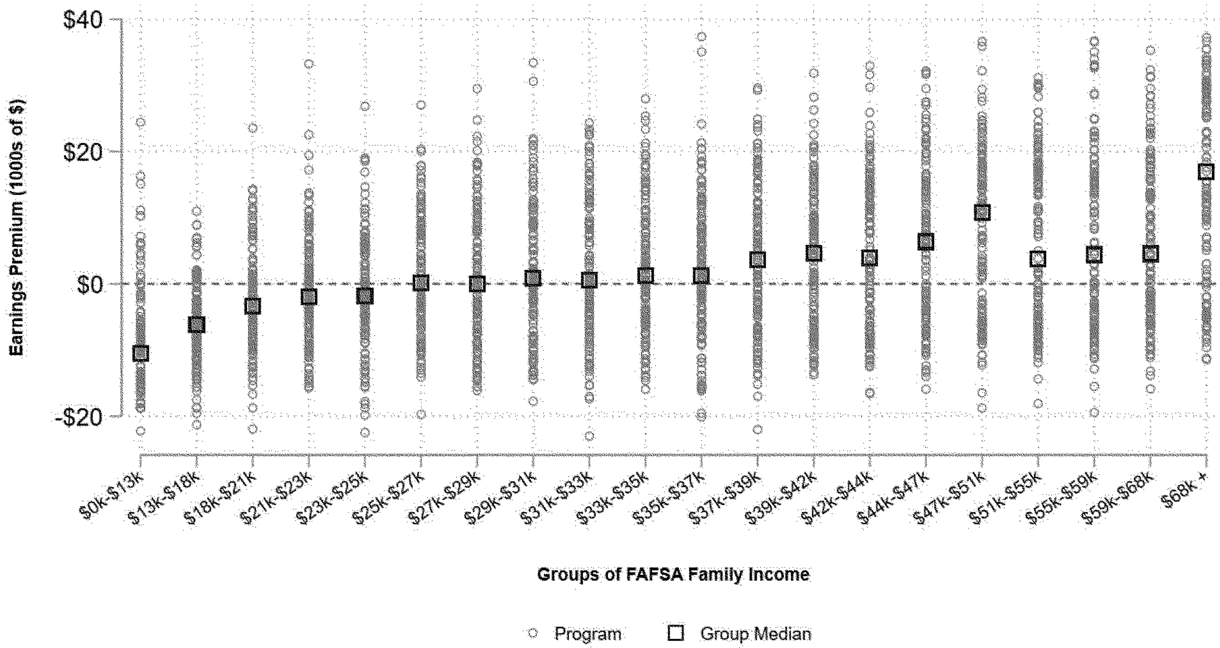
	1	2	3	4	5	6
Private, Nonprofit	7.355 (2.327)	0.215 (1.647)				
Proprietary	−4.613 (0.607)	−10.717 (0.486)				
Credential Level:						
UG Certificates		−18.505 (0.821)	−17.197 (1.611)	−7.579 (1.376)	−20.851 (2.298)	−0.728 (1.902)
Associate's		−6.844 (0.985)	−8.616 (1.283)	−3.605 (1.093)	−11.086 (1.938)	−0.341 (1.242)
Master's		11.188 (1.613)	11.085 (2.031)	7.169 (1.764)	11.323 (3.453)	8.738 (2.830)
Doctoral		32.005 (2.892)	32.988 (4.440)	20.813 (3.932)	28.303 (6.102)	10.521 (4.338)
Professional		41.519 (12.275)	58.782 (13.667)	44.858 (11.362)	66.297 (9.928)	43.511 (11.765)
Grad Certs		23.979 (3.219)	13.521 (4.118)	11.646 (3.529)	7.767 (6.321)	8.836 (6.407)
% Black				−0.114 (0.047)		−0.198 (0.058)
% Hispanic				−0.084 (0.038)		−0.002 (0.061)
% Asian				0.492 (0.110)		1.390 (0.266)
% Male				0.099 (0.007)		0.096 (0.016)
% Ever Pell				−0.153 (0.045)		−0.084 (0.064)
% First Generation				−0.053 (0.029)		0.001 (0.047)
% Independent				0.143 (0.017)		0.193 (0.031)
FAFSA Family Income ($1,000)				0.170 (0.055)		0.443 (0.072)
Intercept	11.267 (0.514)	27.732 (0.918)	19.839 (1.311)	9.842 (7.404)	21.911 (1.645)	−20.679 (9.331)
R-squared	0.03	0.42	0.77	0.84	0.71	0.87

Notes: Specifications 3 to 6 include fixed effects for each six-digit OPEID number. Bachelor's degree and public are the omitted categories for credential type and control, respectively. Columns 5 and 6 weight programs by average title IV enrollment in AY16 and AY17.

Conclusions about the extent to which different factors explain variation in program outcomes can be sensitive to the order in which factors are entered into regressions. However, a variance decomposition analysis (that is insensitive to ordering) demonstrates that program and institutional factors explain the majority of the variance in both the D/E and EP metrics across programs when student characteristics are also included.

Figure 3.3 provides another view, demonstrating that many successful programs exist and enroll similar shares of low-income students. It shows the distribution of raw EPs for undergraduate certificate programs (the y-axis is in $1,000s) grouped by the average FAFSA family income of the program. Programs are placed in 20 equally sized groups from lowest to highest FAFSA family income.[234] Each dot represents an individual program. The EP of the median program in each income group, indicated by the large black square, is clearly increasing, reflecting the greater earnings opportunities for students that come from higher income families. However, there is tremendous variation around this median. Even among programs with students that come from the lowest income families, there are clearly programs whose students go on to have earnings success after program completion. This graph demonstrates that demographics are not destiny when it comes to program performance.

[234] Since each of the 20 groups includes the same number of programs, the income range varies across groups.



Note: Earnings for high school graduates are calculated using the American Community Survey as the median earnings of a high school graduate aged 25-34 in the state, among graduates with positive earnings. The earnings premium is defined as the amount above or below the median earnings for a high school graduate in the state. Each dot represents a program and programs are divided into groups based on average FAFSA family income. Groups are formed by dividing programs into 5% groups from lowest to highest incomes (vigintiles).

Figure 3.3 Distribution of Earnings Premium by Family Income, Certificate Programs

Gender Differences

The analysis above showed that programs failing the EP threshold have a higher share of female students. In Table 3.24, descriptively we show that there are many programs that have similar gender composition but have much higher rates of passage than programs in cosmetology and massage, where failure rates are comparatively higher. Other programs, such as practical nursing and dental support, are similar in terms of their gender and racial balance but have much higher passage rates.

TABLE 3.24—GENDER AND RACIAL COMPOSITION OF UNDERGRADUATE CERTIFICATE PROGRAMS

	Share of programs failing	Share of all completers who are . . .					Women (any race)
		Black women	Hispanic women	Asian women	Other women	White women	
Teacher Education	0.068	0.226	0.165	0.025	0.094	0.439	0.950
Human Development	0.022	0.216	0.284	0.039	0.063	0.366	0.968
Health & Medical Admin	0.388	0.209	0.171	0.029	0.086	0.442	0.938
Medical Assisting	0.478	0.171	0.292	0.030	0.067	0.317	0.876
Laboratory Science	0.178	0.163	0.138	0.030	0.079	0.434	0.843
Practical Nursing	0.042	0.154	0.134	0.033	0.067	0.498	0.886
Cosmetology	0.803	0.150	0.191	0.051	0.059	0.451	0.902
Dental Support	0.405	0.146	0.300	0.025	0.064	0.384	0.920
Business Operations	0.261	0.142	0.166	0.020	0.057	0.395	0.781
Business Administration	0.001	0.128	0.090	0.018	0.058	0.308	0.601
Culinary Arts	0.322	0.123	0.148	0.019	0.060	0.249	0.598
Somatic Bodywork	0.617	0.102	0.127	0.029	0.079	0.418	0.754
Accounting	0.071	0.096	0.141	0.060	0.067	0.361	0.725
Criminal Justice	0.041	0.072	0.079	0.004	0.027	0.151	0.333
Liberal Arts	0.038	0.049	0.205	0.043	0.055	0.262	0.613
Allied Health, Diagnostic	0.026	0.046	0.089	0.016	0.034	0.309	0.494
IT Admin & Mgmt	0.046	0.044	0.021	0.009	0.029	0.081	0.183
Ground Transportation	0.007	0.041	0.007	0.003	0.007	0.034	0.092
Computer & Info Svcs	0.074	0.030	0.078	0.012	0.017	0.113	0.250
Precision Metal Working	0.041	0.009	0.007	0.001	0.005	0.036	0.058
HVAC	0.026	0.008	0.003	0.000	0.001	0.012	0.025
Fire Protection	0.000	0.007	0.019	0.001	0.005	0.058	0.091
Power Transmission	0.016	0.007	0.006	0.000	0.003	0.019	0.035
Vehicle Maintenance	0.049	0.006	0.011	0.001	0.006	0.027	0.052
Environment Ctrl Tech	0.011	0.006	0.007	0.001	0.005	0.018	0.036

Conclusions of Student Demographic Analysis

On several dimensions, programs that have higher enrollment of underserved students have worse outcomes—lower completion, higher default, and lower post-college earnings levels—due to a myriad of challenges these students face, including fewer financial resources and structural discrimination in the labor market.[235] And yet, there is evidence that some institutions aggressively recruited vulnerable students—-at times with deceptive marketing and fraudulent data—into programs without sufficient institutional support and instructional investment, placing students at risk for having high debt burdens and low earnings.[236] Nonetheless, our analysis demonstrates that GE programs that fail the metrics have particularly bad outcomes that are not explained by student demographics alone. Furthermore, alternative programs with similar student characteristics but where students have better outcomes exist and serve as good options for students that would otherwise attend low-performing programs. We quantify the extent of these alternative options more directly in the next section. The proposed GE rule aims to protect students from low-value programs and steer them to programs that would be greater engines of upward economic mobility.

Alternative Options Exist for Students To Enroll in High-Value Programs

Measuring Students' Alternative Options

One concern with limiting title IV, HEA eligibility for low-performing GE programs is that such measures could reduce postsecondary opportunities for some students. The Department conducted an analysis to estimate the short-term alternative options that are available to students that might, in the absence of these regulations, enroll in failing programs.

Students deterred from attending a specific program because of a loss of title IV, HEA aid eligibility at that program have several alternatives. For programs that are part of a multi-program institution, many may choose to still enroll at the institution, but attend a different program in a related subject that did not lose access to title IV, HEA and, therefore, likely offers better outcomes for students in terms of student debt, earnings, or both. Some would stay in their local area but attend a similar program at a different nearby institution. Others would venture to a related subject at a different nearby institution. Still others would attend an institution further away, but perhaps in the same State or online.[237] In order to identify geographical regions where the easiest potential transfer options exist, we used the 3-digit ZIP code (ZIP3) in which each institution is located. Three-digit zip codes designate the processing and distribution center of the United States Postal Service that serves a given geographic area. For each combination of ZIP3, CIP code, and credential level, we determined the number of programs available and the number of programs that would pass both the D/E and EP rates measures. Since programs that pass due to insufficient n-size to compute D/E and EP rates represent real options for students at failing programs, we include these programs in our calculations. Importantly, we also include all non-GE programs at public and private non-profit institutions.[238] Our characterization of programs by the number of alternative options available is also used in the simulations of enrollment shifts that underly the Budget Impact and Cost, Benefit, and Transfer estimates, which we describe later.

Table 3.25 reports the distribution of the number of transfer options available to the students that would otherwise attend GE programs that fail at least one of the two metrics. We present estimates for four different ways of conceptualizing and measuring these transfer options. We assume students have more flexibility over the specific field and institution attended than credential level, so all four measures assume students remain in the same credential level. While not captured in this analysis, it is possible that some students would pursue a credential at a higher level in the same field, thereby further increasing their available options. Half of students in failing GE programs (in 42 percent of failing programs) have at least one alternative non-failing program of the same credential level at the same institution, but in a related field (as indicated by being in the same 2-digit CIP code). Nearly a quarter have more than one additional option. Two-thirds of students (at 61 percent of the failing programs) have a transfer option passing the GE measures within the same geographic area (ZIP3), credential level, and narrow field (4-digit CIP code). More than 90 percent of students have at least one transfer option within the same geographic area and credential level when the field is broadened to include programs in the same 2-digit CIP code. Finally, all students have at least one program in the same State, credential level, and 2-digit CIP code. While this last measure includes options that may not be viable for currently enrolled students—requiring moving across the State or attending virtually—it does suggest that at least some options are available for all students, both current and potential students, that would otherwise attend failing GE programs.

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[235] Blau, Francine D., and Lawrence M. Kahn. 2017. ''The Gender Wage Gap: Extent, Trends, and Explanations.'' Journal of Economic Literature 55 (3): 789–865.

Hillman, N.W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education* 37(2), 169–195.

Pager, D., Western, B. & Bonikowski, B. (2009). Discrimination in a Low-Wage Labor Market: A Field Experiment. *American Sociological Review, 74,* 777–799.

[236] Cottom, T.M. (2017). *Lower Ed: The Troubling Rise of For-Profit Colleges in the New Economy.*

Government Accountability Office (2010). *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices.*

United States Senate Committee on Health, Education, Labor and Pensions (2012). *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success.*

[237] Two other possibilities, which we include in our simulation of budget impacts, is that students continue to enroll in programs without receiving title IV, HEA aid or decline to enroll altogether.

[238] Since the 2022 PPD are aggregated to each combination of the six-digit OPEID, four-digit CIP code, and credential level, we do not have precise data on geographic location. For example, a program can have multiple branch locations in different cities and States. At some of these locations, the program could be offered as an online program while other locations offer only in-person programs. Each of these locations would present as a single program in our data set without detail regarding precise location or format. We do not possess more detailed geographic information that would allow us to address this issue, so we recognize that our analysis of geographic scope and alternatives may be incomplete and cause us to understate the number of options students have. Nonetheless, the vast majority of alternative options will be captured in our analysis.

TABLE 3.25—SHARE OF PROGRAMS AND ENROLLMENT IN FAILING GE PROGRAMS, BY NUMBER OF ALTERNATIVE OPTIONS

	Same institution, cred level, CIP2	Same Zip3, cred level, CIP4	Same Zip3, cred level, CIP2	Same state, cred level, CIP2
A. Programs Transfer options:				
1 or more	0.42	0.61	0.88	1.00
5 or more	0.04	0.05	0.51	0.96
B. Enrollment Transfer options:				
1 or more	0.50	0.66	0.91	1.00
5 or more	0.04	0.05	0.53	0.96

Table 3.26 repeats this analysis for non-GE programs with at least one failing GE metric. Students considering non-GE programs with D/E or EP metrics that do not meet Department standards may choose to enroll elsewhere. More than half of students at failing non-GE programs have a non-failing program in the same 4-digit CIP code, credential level, and geographic area that they could choose to enroll in. This share approaches three-quarters if the field is broadened to include programs in the same two-digit CIP code. Therefore, while the set of alternatives is not as numerous for non-GE programs as for GE programs, the number of alternatives is still quite high. Furthermore, since non-GE programs are not at risk of losing eligibility for title IV aid, the slightly lower number of alternatives to failing non-GE programs is less concerning.

TABLE 3.26—SHARE OF PROGRAMS AND ENROLLMENT IN FAILING NON-GE PROGRAMS, BY NUMBER OF ALTERNATIVE OPTIONS

	Same institution, cred level, CIP2	Same Zip3, cred level, CIP4	Same Zip3, cred level, CIP2	Same state, cred level, CIP2
A. Programs Transfer options:				
1 or more	0.54	0.50	0.81	0.99
5 or more	0.11	0.07	0.41	0.94
B. Enrollment Transfer options:				
1 or more	0.38	0.51	0.72	1.00
5 or more	0.08	0.06	0.31	0.93

This analysis likely understates the transfer options available to students for three reasons. First, as stated above, it does not consider programs of a different credential level. For example, students who would have pursued a certificate program might opt for an associate degree program that shows higher earnings. Second, it does not consider the growth of online/distance programs now available in most fields of study, from both traditional schools and primarily on-line institutions.

Third, we do not consider non-title IV, HEA institutions. Undergraduate certificate programs in cosmetology represent the largest group of programs without nearby passing options in the same four-digit CIP code, in large part because many of these programs do not pass the GE metrics. Nonetheless, recent data from California and Texas suggest that many students successfully pass licensure exams after completing non-title IV, HEA programs in cosmetology.[239] Non-title IV, HEA cosmetology schools operate in almost all counties in Texas.[240] In Florida, non-title IV, HEA cosmetology schools have similar licensure pass rates but much lower tuition.[241]

Potential Alternative Programs Have Better Outcomes Than Failing Programs

A key motivation for more accountability via this proposed rule is to steer students to higher value programs. As mentioned previously, research has shown that when an institution closed due to failing an accountability measure, students were diverted to schools with better outcomes.[242] The Department conducted an analysis of the possible earnings impact of students shifting from programs that fail one of the GE metrics to similar programs that do not fail. For each failing program, we computed the average program-level median earnings of non-failing programs included in the failing program's transfer options, which we refer to as ''Alternative Program Earnings.'' Earnings were weighted by average title IV, HEA enrollment in award years 2016 and 2017. Alternative options were determined in the same way as described above. In computing Alternative Program Earnings, priority was first given to passing programs in the same institution, credential level, and two-digit CIP code if such programs exist and have valid earnings. This assigned Alternative Program Earnings for 20 percent of failing programs. Next priority was given to programs in the same ZIP3, credential level, and four-digit CIP code, which assigned Alternative Program Earnings for 8 percent of programs. Next was programs in the same ZIP3, credential level, and two-digit CIP code, which assigned Alternative Program Earnings for 14

[239] In California, 55 percent of individuals passing either the practical or written components of the licensure test are from title IV, HEA schools according to Department analysis using licensing exam data retrieved from *www.barbercosmo.ca.gov/schools/schls_rslts.shtml* on December 7, 2022.

[240] Cellini, S. R. & Onwukwe, B. (2022). Cosmetology Schools Everywhere. Most Cosmetology Schools Exist Outside of the Federal Student Aid System. Postsecondary Equity & Economics Research Project working paper, August 2022.

[241] Cellini, S. R., & Goldin, C. (2014). Does federal student aid raise tuition? New evidence on for-profit colleges. *American Economic Journal: Economic Policy,* 6(4), 174–206.

[242] Cellini, S.R., Darolia, R. & Turner, L.J. (2020). Where Do Students Go When For-Profit Colleges Lose Federal Aid? *American Economic Journal: Economic Policy, 12*(2): 46–83.

percent of programs. We did not use the earnings of programs outside the ZIP3 to assign Alternative Program Earnings given the wage differences across regions. It was not possible to compute the earnings of alternative options for the remaining 59 percent of programs primarily because their options have insufficient number of completers to report median earnings (47 percent) or because they did not have alternative options in the same ZIP3 (12 percent). For these programs, we set the Alternative Program Earnings equal to the median earnings of high school graduates in the State (the same value used to determine the ET). The percent increase in earnings associated with moving from a failing program to a passing program was computed as the difference between a program's Alternative Program Earnings and its own median earnings, divided by its own median earnings. We set this earnings gain measure to 100 percent in the small number of cases where the median program earnings are zero or the ratio is greater than 100 percent.

Table 3.27 reports the estimated percent difference in earnings between alternative program options and failing programs, separately by two-digit CIP and credential level. Across all subjects, the difference in earnings at passing undergraduate certificate programs and failing programs is about 50 percent. This is unsurprising, given that the EP metric explicitly identifies programs with low earnings, which in practice are primarily certificate programs. Encouragingly, many passing programs exist in the same subject, level, and market that result in much higher earnings than programs that fail. Failing associate degree programs also have similar non-failing programs with much higher earnings. Earnings differences are still sizable and positive, though not quite as large for higher credentials. Passing GE bachelor's programs have 31 percent higher earnings than bachelor's programs that fail the GE metrics.

Table 3.28 reports similar estimates for non-GE programs. The earnings difference between failing and passing non-GE programs is more modest than for GE programs, but still significant: 21 percent across all credential levels, ranging from close to zero for Doctoral programs to 30 percent for Bachelor's programs.

We use a similar process to compute the percent change in average program-level median debt between failing GE or non-GE programs and alternative programs.[243] Tables 3.29 and 3.30 report the percent change in debt between alternative program options and failing programs, separately by two-digit CIP and credential level. Across all subjects and credential levels, debt is 22 percent lower at alternative programs than at failing GE programs. Large differences in debt are seen at all degree levels (other than professional), with modest differences for undergraduate certificate programs. At non-GE programs, there is no aggregate debt difference between failing programs and their alternatives, though this masks heterogeneity across credential levels. For graduate degree programs, relative to failing programs, alternative programs have lower debt levels ranging from 24 percent (Professional programs) to 35 percent (Doctoral programs). Failing associate degree programs have debt that is 12 percent higher than in passing programs.

While these differences don't necessarily provide a completely accurate estimate of the actual earnings gain or debt reduction that students would experience by shifting programs, they suggest alternative options exist that provide better financial outcomes than programs that fail the proposed D/E and EP metrics.

TABLE 3.27—PERCENT EARNINGS DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

	Credential level							Total
	UG cert.	Assoc.	Bach.	Master's	Doctoral	Profess.	Grad certs	
cip2								
1	1.00							1.00
3			−0.18					−0.18
9	0.18		0.24	0.24				0.20
10	0.42	0.26	−0.02	−0.38				0.07
11	0.55	0.24	0.79	−0.62				0.47
12	0.54	0.11	−0.18				1.00	0.53
13	0.48	0.38	0.13	0.46	0.18		−0.04	0.22
14		−0.01	−0.37					−0.20
15	0.16	−0.10						0.13
16			−0.03					−0.03
19	0.69	0.29	0.13	−0.27	−0.55			0.12
22	0.33	−0.03	−0.03			0.22	−0.60	−0.00
23	0.57	0.00	0.38	−0.09				0.45
24	0.06							0.06
25			−0.03					−0.03
26							−0.32	−0.32
30		0.24	−0.03				−0.34	0.01
31	0.51	−0.00						0.09
32	0.32							0.32
39	0.40		−0.03	−0.20				0.04
42			0.06	0.21	−0.39		−0.34	−0.06
43	0.25	0.19	0.24	0.42	−0.56			0.21
44		0.10	0.43	0.15	0.12		−0.50	0.31
45			0.23	−0.24				0.06
46	0.45							0.45
47	0.70	0.14						0.61

[243] The only exception being that we use the debt for alternative programs in the same credential level, same two-digit CIP code, and State to impute alternative program debt if such a program is not available or calculable in students' ZIP3. This is because there is no other natural benchmark debt level analogous to the ET used to compute alternative program earnings.

TABLE 3.27—PERCENT EARNINGS DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL—Continued

	Credential level							Total
	UG cert.	Assoc.	Bach.	Master's	Doctoral	Profess.	Grad certs	
48	0.25							0.25
49	0.76							0.76
50	0.46	0.22	0.27	0.46				0.30
51	0.50	0.81	0.76	0.87	−0.07	−0.06	0.00	0.60
52	0.51	0.31	0.61	0.22	0.34		0.20	0.38
54			−0.13					−0.13
Total	0.51	0.48	0.31	0.49	−0.34	−0.03	−0.14	0.43

TABLE 3.28—PERCENT EARNINGS DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

	Credential level					Total
	Assoc.	Bach.	Master's	Doctoral	Profess.	
cip2						
1	0.31	0.12				0.16
3		0.38	−0.24			0.30
4			−0.31			−0.31
5		0.02				0.02
9	0.12	0.31	−0.02			0.27
10	0.14	−0.01				0.11
11	0.32	1.00				0.37
12	0.25					0.25
13	0.22	0.32	0.20	−0.12		0.23
15	0.83					0.83
16	0.03	0.43				0.40
19	0.18	0.40	−0.42			0.27
22	−0.02	−0.09	−0.26	−0.59	−0.08	−0.14
23	0.38	0.23	−0.18			0.20
24	0.15	0.10	−0.54			0.14
26	0.13	0.39	0.12	−0.70		0.31
30	0.12	0.11	−0.17			0.10
31	0.10	0.22	−0.22			0.18
38	−0.05	−0.10				−0.07
39	0.55	0.49	−0.02		0.20	0.38
40		0.58				0.58
41	0.08					0.08
42	0.31	0.04	−0.10	−0.34	−0.69	−0.01
43	0.20	0.02	−0.12			0.09
44	0.21	−0.04	0.11			0.12
45	0.09	0.47	−0.12			0.23
47	0.38					0.38
50	0.23	0.40	0.31	−0.29		0.37
51	0.65	0.77	0.57	0.26	0.11	0.48
52	0.14	0.53	0.42			0.23
54		0.06	−0.19			−0.09
Total	0.22	0.30	0.15	−0.00	0.03	0.21

TABLE 3.29—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

	Credential level							Total
	UG cert.	Assoc.	Bach.	Master's	Doctoral	Profess.	Grad certs	
cip2								
1	0.00							0.00
3			−0.65					−0.65
9	0.06		−0.26	−0.01				−0.04
10	0.15	0.63	−0.32					−0.15
11	0.06	−0.36	−0.23	−0.79				−0.19
12	−0.23	−0.49	0.13				0.00	−0.24
13	−0.27	−0.89	−0.31	−0.36	−0.18		−0.20	−0.39

TABLE 3.29—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL—Continued

	Credential level							Total
	UG cert.	Assoc.	Bach.	Master's	Doctoral	Profess.	Grad certs	
14		0.01	−0.58					−0.30
15	−0.13	−0.69						−0.19
16			−0.52					−0.52
19	−0.05	−0.26	−0.24	−0.30				−0.23
22	1.00	−0.60	−0.26			−0.40		−0.47
23	0.00	−0.82	−0.33	0.00				−0.18
24	0.00							0.00
25								
26							−0.25	−0.25
30		−0.91	−0.54					−0.58
31	−0.83	−0.75						−0.80
32	0.00							0.00
39	0.59							0.59
42			−0.49	−0.21	−0.76		−0.77	−0.42
43	−0.57	−0.70	−0.42	−0.10				−0.53
44		−0.74	−0.09	−0.28	−0.38			−0.23
45			−0.11					−0.11
46	0.16							0.16
47	0.10	−0.24						0.05
48	−0.21							−0.21
49	0.32							0.32
50	0.21	−0.60	−0.34	−0.23				−0.31
51	0.02	−0.14	−0.37	−0.48	−0.64	0.60	−0.58	−0.09
52	−0.14	−0.42	−0.33	−0.17	−0.17		−0.27	−0.35
54			−0.22					−0.22
Total	−0.09	−0.37	−0.36	−0.35	−0.60	0.48	−0.43	−0.22

TABLE 3.30—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

	Credential level					Total
	Assoc.	Bach.	Master's	Doctoral	Profess.	
cip2						
1	−0.37	−0.14				−0.19
3		0.02	−0.53			−0.06
4			−0.35			−0.35
5		−0.12				−0.12
9	0.64	−0.17	−0.37			−0.09
10	0.01	−0.11				−0.01
11	−0.29	−0.42				−0.30
12	0.08					0.08
13	0.24	−0.14	−0.32	−0.03		0.04
15	0.22					0.22
16	−0.27	0.19				0.15
19	0.07	0.21	−0.39			0.14
22	−0.55	−0.28		−0.16	−0.27	−0.29
23	0.19	−0.04	−0.33			−0.04
24	0.19	−0.10				0.16
26	0.78	0.13	−0.29			0.18
30	−0.15	−0.10	0.00			−0.12
31	0.80	−0.22				0.12
38		−0.26				−0.26
39	−0.67	−0.03	−0.29		0.00	−0.10
40		1.00				1.00
41.						
42	0.33	−0.11	−0.32	−0.46		−0.16
43	−0.22	−0.23	−0.35			−0.24
44	−0.26	−0.30	−0.40			−0.32
45	−0.08	−0.19	−0.53			−0.18
47	0.21					0.21
50	0.25	−0.02	−0.28			−0.01
51	0.02	0.02	−0.10	−0.38	−0.22	−0.10
52	−0.15	−0.26	−0.12			−0.17
54		0.39	−0.79			0.10

TABLE 3.30—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL—Continued

	Credential level					Total
	Assoc.	Bach.	Master's	Doctoral	Profess.	
Total	0.12	−0.07	−0.27	−0.35	−0.24	0.00

Transfer Causes Net Enrollment Increase in Some Sectors

The aggregate change in enrollment overall, by sector, and by institution would likely be less than that implied by the program- and institution-level results presented in the ''Results of GE Accountability'' section above because those do not consider that many students would likely transfer to passing programs or even remain enrolled at failing programs in response to a program losing title IV eligibility. The Department simulated the likely destinations of students enrolled in failing GE programs. Based on the research literature and described more fully in ''Student Response Assumptions'' subsection in Section 5 below, we use assumptions about the share of students that transfer to another program, remain enrolled in the original program, or drop out entirely if a program loses title IV, HEA eligibility. These student mobility assumptions differ according to the number of alternative options that exist and are the same assumptions used in the Net Budget Impact section.

Using these assumptions, for every failing GE program, we estimate the title IV, HEA enrollment from that program that would remain, dropout, or transfer to another program. Our notion of ''transfers'' includes both current students and future students who attend an alternative program instead of one that fails the GE metrics. The number of transfers is then reallocated to specific other non-failing GE and non-GE programs in the same institution (OPEID6), credential level, and 2-digit CIP code. If multiple such programs exist, transfer enrollment is allocated based on the share of initial title IV, HEA enrollment in these programs. If no alternative options exist using this approach, the transfer enrollment is allocated to non-failing GE and non-GE programs in the same geographic area (ZIP3), credential level, and 4-digit CIP code. Again, initial title IV, HEA enrollment shares are used to allocate transfer enrollment if multiple such alternative programs exist. These two approaches reallocate approximately 80 percent of the transfer enrollments we would expect from failing GE programs. Finally, new title IV, HEA enrollment is computed for each program that sums existing enrollment (or retained enrollment, in the case of failing GE programs) and the allocated transfer enrollment.

Table 3.30 summarizes these simulation results, separately by type of institution.[244] Without accounting for transfers or students remaining in failing GE programs, aggregate title IV, HEA enrollment drops by 699,700 (3.6 percent), with at least some enrollment declines in all sectors. This will greatly overstate the actual enrollment decline associated with the proposed regulation because it assumes that students leave postsecondary education in response to their program failing a GE metric. The final column simulates enrollment after accounting for transfers within institution (to similar programs) and to similar programs at other geographically-proximate institutions, along with permitting some modest enrollment retention at failing programs. In this scenario, aggregate enrollment declines by only 228,000 (1.2 percent) due to the proposed rule.[245] Importantly, some sectors experience an enrollment increase as students transfer from failing to passing programs. For instance, public 2-year community colleges are simulated to experience a 27,000-student enrollment increase once transfers are accounted for rather than a 30,000-student decrease when they are not. Historically Black Colleges and Universities (HBCUs) are simulated to gain 1,200 students rather than lose 700.

TABLE 3.31—PROJECTED ENROLLMENT WITH AND WITHOUT TRANSFERS, BY SECTOR

	Number of inst.	Initial enrollment	No transfers or retention	+ within institution-CIP2 transfers	+ within ZIP3–CIP4 transfers
Sector of institution:					
Public, 4-year +	700	8,186,900	8,179,700	8,184,900	8,209,000
Non-profit, 4-year +	1,400	4,002,400	3,994,500	3,998,900	4,005,500
For-profit, 4-year +	200	1,298,800	950,900	1,150,600	1,158,900
Public, 2-year	900	5,025,200	4,995,600	5,013,300	5,052,000
Non-profit, 2-year	100	97,200	74,300	88,100	89,100
For-profit, 2-year	300	290,900	205,000	251,800	259,500
Public, < 2-year	200	42,600	41,300	42,100	46,200
Non-profit, < 2-year	<50	11,600	6,200	8,300	8,500
For-profit, < 2-year	1,000	278,400	86,900	149,400	177,500
Total	4,900	19,234,100	18,534,500	18,887,300	19,006,000

Note: Values rounded to the nearest 100.

[244] Programs at foreign institutions are excluded from this table as they do not have an institutional type.

[245] Note that since many failing programs result in earnings lower than those of the typical high school graduate, students leaving postsecondary education still may be better off financially compared to staying in a failing program.

4. Discussion of Costs, Benefits, and Transfers

Description of Baseline

In absence of the proposed regulations, many students enroll in low-financial-value programs where they either end up not being able to secure a job that leads to higher earnings, take on unmanageable debt, or both. Many of these students default on their loans, with negative consequences for their credit and financial security and at substantial costs to the taxpayers. Many students with insufficient earnings to repay their debts would be eligible to have their payments reduced and eventually have their loans forgiven through income-driven repayment (IDR). This shields low-income borrowers from the consequences of unaffordable debts but shifts the financial burden onto taxpayers.

Transparency and Gainful Employment

We have considered the primary costs, benefits, and transfers of both the transparency and accountability proposed regulations for the following groups or entities that would be affected by the final regulations:

- Students
- Institutions
- State and local governments
- The Federal government

We first discuss the anticipated benefits of the proposed regulations, including improved market information. We then assess the expected costs and transfers for students, institutions, the Federal government, and State and local governments. Table 4.1 below summarizes the major benefits, costs, and transfers and whether they are quantified in our analysis or not.

TABLE 4.1—SUMMARY OF COSTS, BENEFITS, AND TRANSFERS FOR FINANCIAL VALUE TRANSPARENCY AND GAINFUL EMPLOYMENT PROPOSED REGULATIONS

	Students	Institutions	State and local governments	Federal government
Benefits				
Quantified	Earnings gain from shift to higher value programs.		State tax revenue from higher earnings.	Federal tax revenue from higher earnings.
Not quantified	Lower rates of default, higher rates of family & business formation, higher retirement savings, saving of opportunity cost for non-enrollees.	Increased enrollment and revenue associated with new enrollments from improved information about value; improvements in program quality.		
Costs				
Quantified	Time for acknowledgment	Disclosure reporting; time for acknowledgment.	Additional spending at institutions that absorb students from failing programs.	Implementation of data collection and information website.
Not quantified	Time, logistics, credit loss associated with program transfer.	Investments to improve program quality; decreased enrollment and revenue associated with fewer new enrollments from improved information about value.		
Transfers				
Quantified		Aid money from failing programs to govt for non-enrollments; aid money from failing to better-value programs for transfers.		Aid money from failing programs to govt for non-enrollments.
Not quantified	Increased loan payments associated with less IDR forgiveness.	Aid money from failing programs to State govt for non-enrollments.	Aid money from failing programs to State govt for non-enrollments.	Increased loan payments associated with less IDR forgiveness and fewer defaults.

Benefits

We expect the primary benefits of both the accountability and transparency components of the proposed regulation to derive from a shift of students from low-value to high-value programs or, in some cases, a shift away from low-value postsecondary programs to non-enrollment. This shift would be due to improved and standardized market information about GE and non-GE programs. This would increase the transparency of student outcomes for better decision making by current students, prospective students, and their families; the public, taxpayers, and the Government; and institutions. Furthermore, the accountability component would improve program quality by directly eliminating the ability of low-value programs to participate in the title IV, HEA programs. Finally, both the transparency and accountability provisions of the rule should lead to a more competitive postsecondary market that encourages improvement, thereby, improving the outcomes and/or reducing the cost of existing programs that continue to enroll students.

Benefits to Students

Under the proposed regulation, students, prospective students, and their families would have extensive, comparable, and reliable information about the outcomes of students who enroll in GE and non-GE programs such as cost, debt, earnings, completion, and repayment outcomes. This information would assist them in choosing institutions and programs where they believe they are most likely to complete their education and achieve the earnings they desire, while having debt that is manageable. This information would result in more informed decisions based on reliable information about a program's outcomes.

Students would potentially benefit from this information via higher earnings, lower costs and less debt, and better program quality. This can happen through three channels. First, students benefit by transferring to passing programs. Second, efforts to improve programs would lead to better labor market outcomes, such as improved job prospects and higher earnings, by offering better student services, working with employers to ensure graduates have needed skills, improving academic quality, and helping students with career planning. This may happen as institutions improve programs to avoid failing the D/E or EP measures or simply from programs competing more for students based on quality, with the proposed rule providing greater transparency about program quality. As a result of these enrollment shifts, students who graduate with manageable debts and adequate earnings would be more likely to pay back their loans, marry, buy a home, and invest in their futures.[246] Finally, some students that chose not to enroll in low-value programs will save opportunity costs by not investing their time in programs that do not lead to good outcomes. While these other factors are certainly important to student wellbeing, our analysis focuses on the improvement in earnings associated with a shift from low-value programs to higher value programs.

Benefits to Institutions

Institutions offering high-performing programs to students are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs without excessive spending on marketing and recruitment. Additionally, institutions that work to improve the quality of their programs could see increased revenues from improved retention and completion and therefore, additional tuition revenue.

We believe disclosures would increase enrollment and revenues in well-performing programs. Improved information from disclosures would increase market demand for programs that produce good outcomes. While the increases or decreases in revenues for institutions are benefits or costs from the institutional perspective, they are transfers from a social perspective. However, any additional demand for education due to overall program quality improvement would be considered a social benefit.

The improved information that would be available as a result of the proposed regulations would also benefit institutions' planning and improvement efforts. Information about student outcomes would help institutions determine whether it would be prudent to expand, improve quality, reduce costs, or eliminate various programs. Institutions may also use this information to offer new programs in fields where students are experiencing positive outcomes, including higher earnings and steady employment. Additionally, institutions would be able to identify and learn from programs that produce exceptional results for students.

Benefits to State and Local Governments

State and local governments would benefit from additional tax revenue associated with higher student earnings and students' increased ability to spend money in the economy. They would also benefit from reduced costs because, as institutions improve the quality of their programs, their graduates would likely have improved job prospects and higher earnings, meaning that governments would likely be able to spend less on unemployment benefits and other social safety net programs. State and local governments would also experience improved oversight of their investments in postsecondary education. Additionally, State and local postsecondary education funding could be allocated more efficiently to higher-performing programs. State and local governments would also experience a better return on investment on their dollars spent on financial aid programs as postsecondary program quality improves.

Benefits to Federal Government

The Federal government would benefit from additional tax revenue associated with higher student earnings and students' increased ability to spend money in the economy. Another primary benefit of the proposed regulations would be improved oversight and administration of the title IV, HEA programs, particularly the new data reported by institutions. Additionally, Federal taxpayer funds would be allocated more efficiently to higher-performing programs, where students are more likely to graduate with manageable amounts of debt and gain stable employment in a well-paying field, increasing the positive benefits of Federal investment in title IV, HEA programs.

The taxpayers and the Government would also benefit from improved information about GE programs. As the funders and stewards of the title IV, HEA programs, these parties have an interest in knowing whether title IV, HEA program funds are benefiting students. The information provided in the disclosures would allow for more effective monitoring of the Federal investment in GE programs.

Costs

Costs to Students

Students may incur some costs as a result of the proposed regulations. One cost is that all title IV, HEA students attending eligible non-GE programs that fail the D/E metric would be required to acknowledge having seen information about program outcomes before title IV aid is disbursed. Students attending GE programs with at least one failing metric would additionally be required to acknowledge a warning that the program could lose title IV, HEA eligibility. The acknowledgement is the main student cost we quantify in our analysis. We expect that over the long-term, all students would have increased access to programs that lead to successful outcomes. In the short term, students in failing programs would incur search and logistical costs associated with finding and enrolling in an alternative program, whether that be a GE or non-GE program. Further, at least some students may be temporarily left without transfer options. We expect that many of these students would re-enter postsecondary education later, but we understand that some students may not continue. We do not quantify these costs associated with searching for and transferring to new postsecondary programs.

Costs to Institutions

Under the proposed regulations, institutions would incur costs as they make changes needed to comply, including costs associated with the reporting, disclosure, and acknowledgment requirements. These costs could include: (1) Training of staff for additional duties, (2) potential hiring of new employees, (3) purchase of new, or modifications to existing, software or equipment, and (4) procurement of external services.

As described in the Preamble, much of the necessary information required from GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. Furthermore, 88 percent of public and 47 percent of private non-profit institutions operated at least one GE

[246] Chakrabarti, R., Fos, V., Liberman, A. & Yannelis, C. (2020). Tuition, Debt, and Human Capital. Federal Reserve Bank of New York Staff Report No. 912.

Gicheva, D. (2016). Student Loans or Marriage? A Look at the Highly Educated. Economics of Education Review, 53, 207–2016.

Gicheva, D. & Thompson, J. (2015). The effects of student loans on long-term household financial stability. In B. Hershbein & K. Hollenbeck (Ed.). Student Loans and the Dynamics of Debt (137–174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

Hillman, N.W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. Review of Higher Education 37(2), 169–195.

Mezza, A., Ringo, D., Sherlund, S., & Sommer, K. (2020). ''Student Loans and Homeownership,'' Journal of Labor Economics, 38(1): 215–260.

program and thus have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the Federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. Finally, for the first year after the effective date of the proposed rule, the Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

Our initial estimate of the time cost of these reporting requirements for institutions is 5.1 million hours initially and then 1.5 million hours annually after the first year. The Department recognizes that institutions may have different approaches and processes for record-keeping and administering financial aid, so the burden of the GE and financial transparency reporting could vary by institution. Many institutions may have systems that can be queried or existing reports that can be adapted to meet these reporting requirements. On the other hand, some institutions may still have data entry processes that are very manual in nature and generating the information for their programs could involve many more hours and resources. Institutions may fall in between these poles and be able to automate the reporting of some variables but need more effort for others. The total reporting burden will be distributed across institutions depending on the setup of their systems and processes. We believe that, while the reporting relates to program or student-level information, the reporting process is likely to be handled at the institutional level.

Table 4.2 presents the Department's estimates of the hours associated with the reporting requirements. The reporting process will involve staff members or contractors with different skills and levels of responsibility. We have estimated this using Bureau of Labor statistics median hourly wage for Education Administrators, Post-Secondary of $46.59.[247]

TABLE 4.2—ESTIMATED HOURS AND WAGE RATE FOR REPORTING REQUIREMENTS

Process	Hours	Hours basis
Review systems and existing reports for adaptability for this reporting	10	Per institution.
Develop reporting query/result template:		
Program-level reporting	15	Per institution.
Student-level reporting	30	Per institution.
Run test reports:		
Program-level reporting	0.25	Per institution.
Student-level reporting	0.5	Per institution.
Review/validate test report results:		
Program-level reporting	10	Per institution.
Student-level reporting	20	Per institution.
Run reports:		
Program-level reporting	0.25	Per program.
Student-level reporting	0.5	Per program.
Review/validate report results:		
Program-level reporting	2	Per program.
Student-level reporting	5	Per program.
Certify and submit reporting	10	Per institution.

The ability to set up reports or processes that can be rerun in future years, along with the fact that the first reporting cycle includes information from several prior years, means that the expected burden should decrease significantly after the first reporting cycle. We estimate that the hours associated with reviewing systems, developing or updating queries, and reviewing and validating the test queries or reports will be reduced by 35 percent after the first year. After initial reporting is completed, the institution will need to confirm there are no program changes in CIP code, credential level, preparation for licensure, accreditation, or other items on an ongoing basis. We expect that process would be less burdensome than initially establishing the reporting. Table 4.3 presents estimates of reporting burden for the initial year and subsequent years under proposed § 668.408.

TABLE 4.3.1—ESTIMATED REPORTING BURDEN FOR THE INITIAL REPORTING CYCLE

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	153	530	31,080	1,448,006
Proprietary 2-year	1,353	3,775	246,575	11,487,918
Public 2-year	1,106	36,522	1,238,082	57,682,217

[247] Available at *https://www.bls.gov/oes/current/oes119033.htm.*

TABLE 4.3.1—ESTIMATED REPORTING BURDEN FOR THE INITIAL REPORTING CYCLE—Continued

Control and level	Institution count	Program count	Hours	Amount
Private 4-year	1,449	48,797	1,651,449	76,940,997
Proprietary 4-year	204	3,054	114,207	5,320,904
Public 4-year	742	57,769	1,861,886	86,745,245
Total	5,007	150,447	5,143,277	239,625,287

TABLE 4.3.2—ESTIMATED REPORTING BURDEN FOR SUBSEQUENT REPORTING CYCLES

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	153	530	14,206	661,834
Proprietary 2-year	1,353	3,775	118,554	5,523,443
Public 2-year	1,106	36,522	356,042	16,587,973
Private 4-year	1,449	48,797	473,811	22,074,843
Proprietary 4-year	204	3,054	37,133	1,730,003
Public 4-year	742	57,769	496,682	23,140,403
Total	5,007	150,447	1,496,426	69,718,499

The Department welcomes comments on the assumptions related to the reporting burden of the proposed regulations. As described under Paperwork Reduction Act of 1995, the final estimates of reporting costs will be cleared at a later date through a separate information collection.

As described in the section titled ''Paperwork Reduction Act of 1995,'' the final estimates of reporting costs will be cleared at a later date through a separate information collection. Institutions' share of the annual costs associated with disclosures, acknowledgement for non-GE programs, and warnings and acknowledgement for GE programs are estimated to be $12 million, $0.05 million, and $0.76 million, respectively. Note that most of the burden associated acknowledgements will fall on students, not institutions. These costs are discussed in more detail in the section titled ''Paperwork Reduction Act of 1995.''

Institutions that make efforts to improve the outcomes of failing programs would face additional costs. For example, institutions that reduce the tuition and fees of programs would see decreased revenue. For students who are currently enrolled in a program, the reduced price would be a transfer to them in the form of a lower cost of attendance. In turn, some of this price reduction would be a transfer to the government if the tuition was being paid for with title IV, HEA funds. An institution could also choose to spend more on curriculum development to, for example, link a program's content to the needs of in-demand and well-paying jobs in the workforce, or allocate more funds toward other functions. These other functions could include hiring better faculty; providing training to existing faculty; offering tutoring or other support services to assist struggling students; providing career counseling to help students find jobs; acquiring more up-to-date equipment; or investing in other areas where increased spending could yield improved performance. However, as mentioned in the benefits section, institutions that improve program quality could see increased tuition revenue with improved retention and completion.

The costs of program changes in response to the proposed regulations are difficult to quantify generally as they would vary significantly by institution and ultimately depend on institutional behavior. For example, institutions with all passing programs could elect to commit only minimal resources toward improving outcomes. On the other hand, they could instead make substantial investments to expand passing programs and meet increased demand from prospective students, which could result in an attendant increase in enrollment costs. Institutions with failing programs could decide to devote significant resources toward improving performance, depending on their capacity, or could instead elect to discontinue one or more of the programs. However, as mentioned previously, some of these costs might be offset by increased revenue from improved program quality. Given these ambiguities, we do not quantify costs (or benefits) associated with program quality improvements.

Finally, some poorly performing programs will experience a reduction in enrollment that is not fully offset by gains to other institutions (which will experience increased enrollment) or the Federal government (which will experiences lower spending on Title IV, HEA aid). These losses should be considered as costs for institutions.

Costs to States and Local Governments

State and local governments may experience increased costs as enrollment in well-performing programs at public institutions increases as a result of some students transferring from programs at failing programs, including those offered by for-profit institutions.

The Department recognizes that a shift in students to public institutions could result in higher State and local government costs, but the extent of this is dependent on student transfer patterns, State and local government choices, and the existing capacity of public programs. If States choose to expand the enrollment capacity of passing programs at public institutions, it is not necessarily the case that they would face marginal costs that are similar to their average cost or that they would only choose to expand through traditional brick-and-mortar institutions. The Department continues to find that many States across the country are experimenting with innovative models that use different methods of instruction and content delivery, including online offerings, that allow students to complete courses faster and at lower cost. Furthermore, enrollment shifts would likely be towards community colleges, where declining enrollment has created excess capacity. An under-subscribed college may see greater efficiency gains from increasing enrollment and avoid other costly situations such as unused classroom space or unsustainably low enrollment. Forecasting the extent to which future growth would occur in traditional settings versus online education or some other model is outside the scope of this analysis. Nonetheless, we do include the additional instructional cost associated with a shift from failing to passing programs in our analysis, some of which will fall on state and local governments.

Costs to Federal Government

The main costs to the Federal government involve setting up the infrastructure to handle and process additional information reported by institutions, compute rates and other information annually, and maintain a website to host the disclosure information and acknowledgment process. Most of these activities would be integrated into the Department's existing processes. We estimate that the total implementation cost will be $30 million.

Transfers

Enrollment shifts between programs, and potentially to non-enrollment, would transfer resources between students, institutions, State and local governments, and the Federal government. We model three main transfers. First, if some students drop out of postsecondary education or remain in programs that lose eligibility for title IV, HEA Federal student aid, there would be a transfer of Federal student aid from those students to the Federal government. Second, as students change programs based on program performance, disclosures, and title IV, HEA eligibility, revenues and expenses associated with students would transfer between postsecondary institutions. Finally, the additional earnings associated with movement from low- to high-value programs would result in greater loan repayment by borrowers. This is through both lower default rates and a lower likelihood of loan forgiveness through existing IDR plans. This represents a transfer from students to the Federal government. We do not quantify the transfers between students and State governments associated with changes in State-financed student aid, as such programs differ greatly across States. Transfers between students and States could be net positive for States if fewer students apply for, or need, State aid programs or they could be negative if enrollment shifts to State programs results in greater use of State aid.

Financial Responsibility

The Department has a responsibility to ensure that the institutions participating in the title IV, HEA programs have the financial resources to meet the requirements of the HEA and its regulations. This includes ensuring that their financial situation is unlikely to lead them to a sudden and unexpected closure or to operate in ways that either lead to a significant deterioration in the education and related services delivered or the need to engage in riskier behavior, such as aggressive recruitment, to stay financially afloat.

The Department also has a responsibility to protect taxpayers from the costs incurred by the Federal government due to the sudden closure of an institution. Ensuring the Department has sufficient tools to identify and take steps to more closely oversee institutions that are in a financially precarious position is particularly important because students enrolled at the time an institution closes, or who have left shortly before without completing their program, are entitled to a discharge of their Federal student loan balances. If the Department has failed to secure financial protection from the institution prior to that point it is highly likely under existing regulations that taxpayers will end up bearing the cost of those discharges in the form of a transfer from the Department to those borrowers who have their loans cancelled.

Historically when institutions close there are little to no resources left at the school, and to the extent there are, the Department must compete with other creditors to secure some assets. In some cases, other entities that had ownership stakes in the institution still had resources even when the institution itself did not, but the Department lacked the ability to recover funds from these other entities.

These proposed regulations provide greater tools for the Department to demand financial protection when an institution exhibits signs of financial instability and to obtain information that would make it easier to detect those problems sooner than it currently does. It also clarifies the rules about financial protection when institutions change owners, a situation that can be risky for students and taxpayers, particularly if the purchasing entity lacks experience or the necessary financial strength to effectively manage an acquired institution.

The table below provides information on the Department's estimates of how frequently the circumstances associated with the proposed mandatory and discretionary triggers have occurred in the last several years.

TABLE 4.4—MANDATORY TRIGGERING EVENTS

Trigger	Description	Impact
Debts or liability payments 668.171(c)(2)(i)(A).	An institution with a composite score of less than 1.5 with some exceptions is required to pay a debt or incurs a liability from a settlement, final judgment, or similar proceeding that results in a recalculated composite score of less than 1.0.	For institutional fiscal years that ended between July 1, 2019, and June 30, 2020, there were 225 private nonprofit or proprietary schools with a composite score of less than 1.5. Of these, 7 owe a liability to the Department, though not all of these liabilities are significant enough to result in a recalculated score of 1.0. We do not have data on non-Department liabilities that might meet this trigger.
Lawsuits 668.171(c)(2)(i)(B)	Lawsuits against an institution after July 1, 2024, by Federal or State authorities or a qui tam pending for 120 days in which the Federal government has intervened.	The Department is aware of approximately 50 institutions or ownership groups that have been subject to Federal or State investigations, lawsuits, or settlements since 2012. This includes criminal prosecutions of owners.
Borrower defense recoupment 668.171(c)(2)(i)(C).	The Department has initiated a proceeding to recoup the cost of approved borrower defense claims against an institution.	The Department has initiated one proceeding against an institution to recoup the proceeds of approved claims. Separately, the Department has approved borrower defense claims at more than six other institutions or groups of institutions where it has not sought recoupment.
Change in ownership debts and liabilities 668.171(c)(2)(i)(D).	An institution in the process of a change of ownership must pay a debt or liability related to settlement, judgment, or similar matter at any point through the second full fiscal year after the change in ownership.	Over the last 5 years there have been 188 institutions that underwent a change in ownership. This number separately counts campuses that may be part of the same chain or ownership group that are part of a single transaction. The Department does not currently have data on how many of those had a debt or liability that would meet this trigger.

TABLE 4.4—MANDATORY TRIGGERING EVENTS—Continued

Trigger	Description	Impact
Withdrawal of owner's equity 668.171(c)(2)(ii)(A).	A proprietary institution with a score less than 1.5 has a withdrawal of owner's equity that results in a composite score of less than 1.0.	In the most recent available data, 161 proprietary institutions had a composite score that is less than 1.5. The Department has not determined how many of those may have had a withdrawal of owner's equity that would meet this trigger.
Significant share of Federal aid in failing GE programs 668.171(c)(2)(iii).	An institution has at least 50 percent of its title IV, HEA aid received for programs that fail GE thresholds.	There are approximately 740 institutions that would meet this trigger. These are almost entirely private for-profit institutions that offer only a small number of programs total. These data only include institutions operating in March 2022 that had completions reported in 2015–16 and 2016–2017. Data are based upon 2018 and 2019 calendar year earnings.
Teach-out plans 668.171(c)(2)(iv).	The institution is required to submit a teach-out plan or agreement.	Not identified because the Department is not currently always informed when an institution is required to submit a teach-out plan or agreement.
State actions 668.171(c)(2)(v) ...	The institution is cited by a State licensing or similar authority for failing to meet State requirements and the institution receives notice that its licensure or authorization will be terminated or withdrawn if it does not come into compliance.	Not identified because the Department is not currently always informed when an institution is subject to these requirements.
Actions related to publicly listed entities 668.171(c)(2)(vi).	These apply to any entity where at least 50 percent of an institution's direct or indirect ownership is listed on a domestic or foreign exchange. Actions include the SEC taking steps to suspend or revoke the entity's registration or taking any other action. It also includes actions from exchanges, including foreign ones, that say the entity is not in compliance with the listing requirements or may be delisted. Finally, the entity failed to submit a required annual or quarterly report by the required due date.	Department data systems currently identify 38 schools that are owned by 13 publicly traded corporations. One of these may be affected by this trigger.
90/10 failure 668.171(c)(2)(vii) ..	A proprietary institution did not meet the requirement to derive at least 10 percent of its revenue from sources other than Federal educational assistance.	Over the last 5 years an average of 12 schools failed the 90/10 test. Most recently, the Department reported that 21 proprietary institutions had received 90 percent or more of their revenue from title IV, HEA programs based upon financial statements for fiscal years ending between July 1, 2020, and June 30, 2021.
Cohort default rate (CDR) failure 668.171(c)(2)(viii).	An institution's two most recent official CDRs are 30 percent or greater.	Twenty institutions with at least 30 borrowers in their cohorts had a CDR at or above 30 percent for the fiscal year (FY)2017 and FY2016 cohorts (the last rates not impacted by the pause on repayment during the national emergency).
Loss of eligibility from other Federal educational assistance program 668.171(c)(2)(ix).	The institution loses its ability to participate in another Federal educational assistance program.	The Department is aware of 5 institutions participating in title IV, HEA programs that have lost access to the Department of Defense's Tuition Assistance (TA) program since 2017. Three of those also lost accreditation or access to title IV, HEA funds.
Contributions followed by a distribution 668.171(c)(2)(x).	The institution's financial statements reflect a contribution in the last quarter of its fiscal year followed by a distribution within first two quarters of the next fiscal year and that results in a recalculated composite score of <1.0.	Not currently identified because this information is not currently centrally recorded in Department databases.
Creditor events 668.171(c)(2)(xi)	An institution has a condition in its agreements with a creditor that could result in a default or adverse condition due to an action by the Department or a creditor terminates, withdraws, or limits a loan agreement or other financing arrangement.	Not currently identified because institutions do not currently report the information needed to assess this trigger to the Department. Several major private for-profit colleges that failed had creditor arrangements that would have met this trigger.
Financial exigency 668.171(c)(2)(xii).	The institution makes a formal declaration of financial exigency	Not identified because institutions do not currently always report this information to the Department.
Receivership 668.171(c)(2)(xiii)	The institution is either required to or chooses to enter a receivership.	The Department is aware of 3 instances of institutions entering receiverships in the last few years. Each of these institutions ultimately closed.

TABLE 4.5—DISCRETIONARY TRIGGERING EVENTS

Trigger	Description	Impact
Accreditor actions 668.171(d)(1)	The institution is placed on show cause, probation, or an equivalent status.	Since 2018, we identified just under 190 private institutions that were deemed as being significantly out of compliance and placed on probation or show cause by their accrediting agency, with the bulk of these stemming from one agency that accredits cosmetology schools.
Other creditor events and judgments 668.171(d)(2).	The institution is subject to other creditor actions or conditions that can result in a creditor requesting grated collateral, an increase in interest rates or payments, or other sanctions, penalties, and fees, and such event is not captured as a mandatory trigger. This trigger also captures judgments that resulted in the awarding of monetary relief that is subject to appeal or under appeal.	Not identified because institutions do not currently report this information to the Department.
Fluctuations in title IV, HEA volume 668.171(d)(3).	There is a significant change upward or downward in the title IV, HEA volume at an institution between consecutive award years or over a period of award years.	From the 2016–2017 through the 2021–2022 award years, approximately 155 institutions enrolled 1,000 or more title IV, HEA students and saw their title IV, HEA volume change by more than 25 percent from one year to the next. Of those, 33 saw a change of more than 50 percent. The Department would need to determine which circumstances indicated enough risk to need additional financial protection.

TABLE 4.5—DISCRETIONARY TRIGGERING EVENTS—Continued

Trigger	Description	Impact
High dropout rates 668.171(d)(4).	An institution has high annual dropout rates, as calculated by the Department.	According to College Scorecard data for the AY2014–15 cohort, there were approximately 66 private institutions that had more than half their students withdraw within two years of initial enrollment. Another 132 had withdrawal rates between 40 and 50 percent. The Department would need to determine which circumstances indicated enough risk to need additional financial protection.
Interim reporting 668.171(d)(5)	An institution that is required to provide additional reporting due to a lack of financial responsibility shows negative cash flows, failure of other liquidation ratios, or other indicators in a material change of the financial condition of a school.	Not currently identified because Department staff currently do not look for this practice in their reviews.
Pending borrower defense claims 668.171(d)(6).	The institution has pending borrower defense claims and the Department has formed a group process to consider at least some of them.	To date there are 48 institutional names as recorded in the National Student Loan Data System that have had more than 2,000 borrower defense claims filed against them. This number may include multiple institutions associated with the same ownership group. There is no guarantee that a larger number of claims will result in a group claim, but they indicate a higher likelihood that there may be practices that result in a group claim.
Program discontinuation 668.171(d)(7).	The institution discontinues a program or programs that affect more than 25 percent of enrolled students.	Not currently identified due to data limitations.
Location closures 668.171(d)(8)	The institution closes more than 50 percent of its locations or locations that enroll more than 25 percent of its students.	Not currently identified due to data limitations.
State citations 668.171(d)(9)	The institution is cited by a State agency for failing to meet a State requirement or requirements.	Not identified because institutions do not currently report this information consistently to the Department.
Loss of program eligibility 668.171(d)(10).	One or more of the programs at the institution loses eligibility to participate in another Federal education assistance program due to an administrative action.	The Department does not currently have comprehensive data on program eligibility loss for all other Federal assistance programs. So, we looked at VA, which is one of the other largest sources of Federal education assistance. Since 2018 the VA reported over 900 instances of an institution of higher education having its access to VA benefits withdrawn. However, this number includes extensive duplication that counts multiple locations of the same school, withdrawals due to issues captured elsewhere like loss of accreditation or closure, and withdrawals that may not have lasted an extended period. The result is that the actual number of affected institutions would likely be significantly lower.
Exchange disclosures 668.171(d)(11).	An institution that is at least 50 percent owned by an entity that is listed on a domestic or foreign stock exchange notes in a filing that it is under investigation for possible violations of State, Federal or foreign law.	Department data systems currently identify 38 schools that are owned by 13 publicly traded corporations. There is one school that could potentially be affected by this trigger.
Actions by another Federal agency 668.171(d)(12).	The institution is cited and faces loss of education assistance funds from another Federal agency if it does not comply with that agency's requirements.	Not identified because current reporting by institutions do not always capture these events.

Benefits

The proposed improvements to the Financial Responsibility regulations would provide significant benefits to the Federal government and to borrowers. They also could benefit institutions that are in stronger financial shape by dissuading struggling institutions from engaging in questionable behaviors to gain a competitive advantage in increasing enrollment. Each of these benefits is discussed below in greater detail.

The proposed Financial Responsibility regulations would provide benefits to the Federal government because they would increase the frequency with which the Department secures additional financial protection from institutions of higher education. This would help the government, and in turn taxpayers, in several ways. First, when an institution closes, a borrower who was enrolled at the time of closure or within 180 days of closure and does not complete their program is entitled to a discharge of their Federal student loans. If the proposed regulations result in more instances where the Department has obtained a letter of credit or other form of financial protection from an institution that closes, then taxpayers would bear less of the costs from those discharges, which occur in the form of a transfer from the Department to the borrower whose loans are discharged. This is important because to date it is very uncommon for the Department to have significant financial resources from an institution to offset the costs from closed school discharges. According to FSA data, closures of for-profit colleges that occurred between January 2, 2014, to June 30, 2021, resulted in $550 million in closed school discharges. These are discharges for borrowers who did not complete their program and were enrolled on the date of closure or left the institution in the months prior to the closure. (This excludes the additional $1.1 billion in closed school discharges related to ITT Technical Institute that was announced in August 2021). Of that amount, the Department recouped just over $10.4 million from institutions.[248]

Second, the ability to secure additional financial protection would help offset the costs the government would otherwise face in the form of transfers associated with approved borrower defense to repayment claims. Under the HEA, borrowers may receive a discharge of their loans when their institutions engage in certain acts or omissions. Under the Biden-Harris Administration, the Department has approved $13 billion in discharges for 979,000 borrowers related to borrower defense findings. This includes a combination of borrowers who received a borrower defense discharge after review of an application they submitted and others who received a discharge as part of a group based upon borrower defense findings where the mechanism used to effectuate relief was the

[248] The budgetary cost of these discharges is not the same as the amount forgiven.

Department's settlement and compromise authority. To date there has only been a single instance in which the Department recovered funds to offset the costs of borrower defense discharges from the institution, which was in the Minnesota School of Business and Globe University's bankruptcy proceeding. In that situation, the Department received $7 million from a bankruptcy settlement. While the Department cannot simply cash in a letter of credit or take other financial protection solely upon approval of borrower defense claims, having the funding upfront is still important. That is because, to date, the Department has mostly approved borrower defense claims against institutions that are no longer operating, including several situations where an institution closed years prior. When that occurs, even if the Department sought to recoup the cost of discharges, there are unlikely to be assets to draw upon. Were there financial protection in place, the Department would have greater confidence that a successful recoupment effort would result in funds being available to offset the cost of discharges.

Third, the Federal government would also benefit from the deterrent effect of additional financial responsibility triggers. Articulating more situations that could lead to either mandatory financial protection or the possibility of a financial protection request would dissuade institutions from taking steps that could trigger those conditions. For example, the Department proposes a trigger tied to situations where an institution has conditions in a financing agreement with an external party that would result in an automatic default if the Department takes an action against the institution. The Department is concerned that such situations are used by institutions to try and discourage the Department from exercising its proper oversight authority due to the financial consequences for the school. It could also be used by the school to blame the Department if the action later results in a closure even though its shuttering is a result of poor management. Therefore, this proposed trigger should discourage the inclusion of such provisions going forward. The same is true for the inclusion of various actions taken by States, accrediting agencies, or the SEC. Knowing that such situations could result in additional requests for financial protection would provide an even greater reason for institutions to avoid risky behavior that could run afoul of other actors.

These proposed triggers would also benefit students. For one, the deterrence benefits mentioned above would help protect students from being taken advantage of by predatory institutions. The Department has seen situations in the past where institutions engaged in risky behavior to keep growing at a rapid rate to satisfy investor expectations. This resulted in colleges becoming too big, too fast to be able to deliver educational value. It also meant that institutions risked becoming financially shaky if they experienced declines in enrollment. While these proposed triggers would not fully discourage rapid growth, they would discourage a growth-at-all-costs mindset, particularly if that growth is encouraged through misrepresentations, aggressive recruitment, or other practices that may run afoul of both the Department and other oversight entities. With the proposed triggers in place, institutions that would otherwise engage in such behaviors may instead opt to stay at a more appropriate and sustainable size at which they are able to deliver financial value for students and taxpayers. This outcome would also decrease the risk of closure, which can be very disruptive for students, often delaying if not terminating their pursuit of a postsecondary credential. For example, research by GAO found that 43 percent of borrowers never completed their program or transferred to another school after a closure.[249] While 44 percent transferred to another school, 5 percent of all borrowers transferred to a college that later closed. GAO then looked at the subset of borrowers who transferred long enough ago that they could have been at the new school for six years, the amount of time typically used to calculate graduation rates. GAO found that nearly 49 percent of these students who transferred did not graduate in that time. These findings are similar to those from SHEEO, which found that just 47 percent of students reenrolled after a closure and only 37 percent of students who reenrolled earned a postsecondary credential.[250]

The proposed regulations' deterrence effect would also benefit students by encouraging institutions to improve the quality and value of their educational offerings. For example, the proposed trigger for institutions with high dropout rates would incentivize institutions to improve their graduation rates. Along with the trigger for institutions failing the cohort default rate, this can reduce the number of students who default on their loans, as students who do not complete a degree are more likely to default on their loans.[251] Improved completion rates also have broader societal benefits, such as increased tax revenue because college graduates, on average, have lower unemployment rates, are less likely to rely on public benefit programs, and contribute more in tax revenue through higher earnings.[252]

Finally, the proposed regulations would also provide benefits for institutions that are not affected by a new request for financial protection. Many of the factors that can lead to a letter of credit would be associated with institutions that have engaged in questionable, and sometimes predatory, behavior, often in the hopes of maintaining or growing enrollment. For instance, aggressive conduct during the recruitment process, including misrepresenting key elements of a program to students, can generate lawsuits, State actions, and borrower defense claims. To the extent these proposed triggers discourage such behaviors, that would help institutions that act responsibly by allowing them to better compete for potential students based on factors like quality and value delivered and of the educational program.

Costs

The proposed regulations could create costs for institutions in a few ways. First, institutions could face costs to obtain a letter of credit or other form of financial protection. Financial institutions typically charge some sort of fee to provide a letter of credit. Or the institution may have to set aside funds so the financial institution is willing to issue the letter of credit. These fees or set aside amounts may be based upon the total amount of the letter of credit and could potentially also reflect the bank's view of the level of risk represented by the school. Institutions do not currently inform the Department of how much they must spend to obtain a letter of credit, so the Department does not have a way of ascertaining any potential added costs resulting from fees or set aside amounts. The fees, however, would be borne by the institution regardless of whether the letter of credit is collected on or not, while funds set aside for the letter of credit would be returned to the institution if it is not collected upon. Other types of financial protection, such as providing funds directly or offsetting title IV, HEA aid

[249] *www.gao.gov/products/gao-21-105373.*

[250] *https://sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.*

[251] *libertystreeteconomics.newyorkfed.org/2017/11/who-is-more-likely-to-default-on-student-loans/.*

[252] *www.luminafoundation.org/resource/its-not-just-the-money/*; *www.thirdway.org/report/ripple-effect-the-cost-of-the-college-dropout-rate.*

received, would not come with such fees.

The second form of cost would be transfers to the Department that occur when it collects on a letter of credit or keeps the funds from a cash escrow account, title IV, HEA offset, or other forms of financial protection. In those situations, the Department would use those funds to offset liabilities owed to it. This would be a benefit to the Department and taxpayers.

The rate at which the Department collects on financial protection it receives would likely change under these proposed regulations. The Department anticipates that one effect of the proposed regulations would be an increase in the instances in which it requests financial protection. That would result in a larger total amount of financial protection available. However, it is possible that the increase in financial protection would result in a lower rate at which those amounts are collected on. This could be a result of the financial protection providing a greater and earlier deterrence against behavior that would have otherwise led to a closure. Additionally, the proposed regulations could result in be more situations where the Department has financial protection but an institution does not ultimately have unpaid liabilities. At the same time, if the Department is more successful in securing financial protection from institutions that do close, it may end up with a greater share of outstanding liabilities covered by funds from an institution.

Administrative Capability

Benefits

The proposed Administrative Capability regulations would provide several benefits for students, the Department, and other institutions of higher education. Each is discussed below in turn.

Students

For students, the proposed changes would particularly help them make more informed choices about where to enroll, how much they might borrow, and ensure that students who are seeking a job get the assistance they need to launch or continue their careers. On the first point, the proposed changes in § 668.16(h) expand an existing requirement related to sufficient financial aid counseling to also include written information, such as what is contained when institutions inform students about their financial aid packages. Having a clear sense of how much an institution will cost is critical for students to properly judge the financial transaction they are entering into when they enroll. For many students and families, a postsecondary education is the second most expensive financial decision they make after buying a home. However, the current process of understanding the costs of a college education is far less consistent than that of a buying a home. For the latter, there are required standard disclosures that present critical information like the total price, interest rate, and the amount of interest that will ultimately be paid. Having such common disclosures helps to compare different mortgage offers.

By contrast, financial aid offers are extremely varied. A 2018 study by New America that examined more than 11,000 financial aid offers from 515 schools found 455 different terms used to describe an unsubsidized loan, including 24 that did not use the word ''loan.'' [253] More than a third of the financial aid offers New America reviewed did not include any cost information. Additionally, many colleges included Parent PLUS loans as ''awards'' with 67 unique terms, 12 of which did not use the word ''loan'' in the description. Similarly, a 2022 report by the GAO estimated that, based on their nationally representative sample of colleges, 22 percent of colleges do not provide any information about college costs in their financial aid offers, and of those that include cost information, 41 percent do not include a net price and 50 percent understate the net price.[254] GAO estimated that 21 percent of colleges do not include key details about how Parent PLUS loans differ from student loans. This kind of inconsistency creates significant risk that students and families may be presented with information that is both not directly comparable across institutions but may be outright misleading. That hinders the ability to make an informed financial choice and can result in students and families paying more out-of-pocket or going into greater debt than they had planned.

While the proposed regulatory language would not mandate that all colleges adopt the same offer, they would establish requirements around key information that must be provided to students. Some of these details align with the existing College Financing Plan, which is used by half of the institutions in at least some form. The proposed regulations will thereby increase the likelihood that students receive consistent information, including, in some cases, through the expanded adoption of the College Financing Plan. Clear and reliable information could further help students choose institutions and programs that might have lower net prices, regardless of sticker price, which may result in students enrolling in institutions and programs where they and their families are able to pay less out of pocket or take on lower amounts of debt.

Students would also benefit from the proposed § 668.16(p), related to proper procedures for evaluating high school diplomas. It is critical that students can benefit from the postsecondary training they pursue. If they do not, then they risk wasting time and money, as well as ending up with loan debt they would struggle to repay because they are unable to secure employment in the field they are studying. Students who have not obtained a valid high school diploma may be at a particular risk of ending up in programs where they are unlikely to succeed. The Department has seen in the past that institutions that had significant numbers of students who enrolled from diploma mills or other schools that did not provide a proper secondary education have had high rates of withdrawal, non-completion, or student loan default. The added requirements in proposed § 668.16(p) would better ensure that students pursuing postsecondary education have received the secondary school education needed to benefit from the programs they are pursuing.

The provision related to adequate career services in proposed § 668.16(q) and the provision of externships in proposed § 668.16(r) would result in significant benefits for students as they are completing their programs. While postsecondary education and training provides a range of important benefits, students repeatedly indicate that getting a job is either the most or among the most important reasons for attending. For example, one survey asked students their reasons for deciding to go to college and 91 percent said to improve their employment opportunities, 90 percent said to make more money, and 89 percent said to get a good job.[255] Another survey of 14- to 23-year-olds showed that two-thirds said they wanted a degree to provide financial security.[256] Similarly, many institutions construct their marketing around their connections to employers, the careers

[253] *www.newamerica.org/education-policy/policy-papers/decoding-cost-college/.*

[254] *www.gao.gov/products/gao-23-104708.*

[255] *www.luminafoundation.org/resource/deciding-to-go-to-college/.*

[256] *www.washingtonpost.com/news/grade-point/wp/2018/09/01/college-students-say-they-want-a-degree-for-a-job-are-they-getting-what-they-want/.*

their students pursue, or other job-related outcomes. But students will have a hard time achieving those goals if the institution lacks sufficient career services to assist them in finding a job. This is even more pronounced for students whose career pathways require an externship or clinical experience, which is commonly a requirement to obtain the necessary license to work in certain fields. Making it an explicit requirement that institutions have sufficient career services and provide necessary clinical or externship experiences would increase the ability of students to find jobs in the fields for which they are being prepared.

The Department anticipates that the proposed provisions in § 668.16(s) would ensure students receive their funds when they most need them. Refunds of financial aid funds remaining after paying for tuition and fees gives students critical resources to cover important costs like food, housing, books, and transportation. Students that are unable to pay for these costs struggle to stay enrolled and may instead need to either leave a program or increase the number of hours they are working, which can hurt their odds of academic success. Ensuring institutions disburse funds in a timely manner would help students get their money when they need it.

Finally, the provisions in §§ 668.16(k)(2) and 668.16(t) through (u) would also benefit students by protecting them from institutions that are engaging in poor behavior, institutions that are at risk of losing access to title IV, HEA aid for a significant share of their students because they do not deliver sufficient value, and institutions that are employing individuals who have a problematic history with the financial aid programs. All three of these elements can be a sign of an elevated risk of closure or an institution's engagement in concerning behaviors that could result in the approval of borrower defense claims or actions under part 668, subpart G, either of which could place the institution in challenging financial situations.

Federal Government

The proposed Administrative Capability regulations would also provide benefits for the Department. False institutional promises about the availability of career services, externships or clinical placements, or the ability to get a job can result in the Department granting a borrower defense discharge. For instance, the Department has approved borrower defense claims at American Career Institute for false statements about career services and at Corinthian Colleges and ITT Technical Institute related to false promises about students' job prospects. But the Department has not been able to recoup the costs of those transfers to borrowers from the Department. Adding these requirements to the Administrative Capability regulations would increase the ability of the Department to identify circumstances earlier that might otherwise lead to borrower defense discharges later. That should reduce the number of future claims as institutions would know ahead of time that failing to offer these services is not acceptable. It also could mean terminating the participation in the title IV, HEA programs sooner for institutions that do not meet these standards, reducing the exposure to future possible liabilities through borrower defense.

The Department would also benefit from improved rules around verifying high school diplomas. Borrowers who received student loans when they did not in fact have a valid high school diploma may be eligible for a false certification discharge. If that occurs, the Department has no guarantee that it would be able to recover the cost of such a discharge, resulting in a transfer from the government to the borrower. Similarly, grant aid that goes to students who lack a valid high school diploma is a transfer of funds that should not otherwise be allowed and is unlikely to be recovered. Finally, if students who lack a valid high school diploma or its equivalent are not correctly identified, then the Department may end up transferring Federal funds to students who are less likely to succeed in their program and could end up in default or without a credential. Such transfers would represent a reduction in the effectiveness of the Federal financial aid programs.

Provisions around hiring individuals with past problems related to the title IV, HEA programs would also benefit the Department. Someone with an existing track record of misconduct, including the possibility that they have pled guilty to or been convicted of a crime, represents a significant risk to taxpayers that those individuals might engage in the same behavior again. Keeping these individuals away from the Federal aid programs would decrease the likelihood that concerning behavior will repeat. The Department is already concerned that today there can be executives who run one institution poorly and then simply jump to another or end up working at a third-party servicer. Without this proposed regulatory change, it can be harder to prevent these individuals from continuing to participate in the aid programs.

The Department would gain similar benefits from the provisions related to institutions with significant enrollment in failing GE programs; institutions subject to a significant negative action subject to findings by a State or Federal agency, court, or accrediting agency; and institutions engaging in misrepresentations. These are situations where a school may be at risk of closure or facing significant borrower defense liabilities. Allowing these institutions to continue to participate in Title IV, HEA programs could result in transfers to borrowers in the form of closed school or borrower defense discharges that are not reimbursed. These proposed provisions would allow for more proactive action to address these concerning situations and behaviors.

Finally, the Department would benefit from students receiving accurate financial aid information. Students whose program costs end up being far different from what the institution initially presented may end up not completing a program because the price tag ends up being unaffordable. That can make them less likely to pay their student loans back and potentially leave them struggling in default. This could also include situations where the cost is presented accurately but the institution fails to properly distinguish grants from loans, resulting in a student taking on more debt than they intended to and being unable to repay their debt as a result.

Costs

The costs of the proposed regulations would largely fall on institutions, as well as some administrative costs for the Department. For institutions that fail to provide clear financial aid information or lack sufficient career services staff, they may face costs either updating their financial aid information (*e.g.,* redoing financial aid offers) or hiring additional staff to bolster career services. The former costs would likely be a one-time, minimal expense, while the latter would be ongoing. Institutions may also face some administrative costs for creating procedures for verifying high school diplomas if they currently lack sufficient processes. This proposed requirement would not entail reviewing every individual high school diploma, so the costs would depend on how many students the institution enrolls that have high school diplomas that may merit additional investigation. Institutions currently enrolling large numbers of students who should not otherwise be deemed to have eligible high school diplomas under these revised policies may also face costs in the form of reduced transfers from the Federal government if these individuals are not able to enroll under an ability-to-benefit pathway. Finally, the costs to an institution associated with having a failing GE program are similar to those discussed in that section of the regulatory impact analysis.

These changes would also impose some administrative costs on the Department. The Department would need to incorporate procedures into its reviews of institutions to identify the added criteria. That could result in costs for retraining staff or added time to review certain institutions where these issues manifest.

Finally, institutions that face significant administrative capability problems related to issues such as State, accreditor, or other Federal agency sanctions or conducting misrepresentations could face costs in the form of reduced transfers from the Department if those actions result in loss of access to title IV, HEA financial assistance. Situations that do not reach that level may or may not result in added costs, including transfers, if they affect receipt of title IV, HEA aid, depending on the steps an institution needs to take to address the concerns.

Certification Procedures

An institution must be certified to participate in the title IV, HEA financial assistance programs. Doing so ensures the institution agrees to abide by the requirements of these programs, helping to maintain integrity and accountability around Federal dollars. Decisions about whether to certify an institution's participation, how long to certify it for, and what types of conditions should be placed on that certification are a critical element of managing oversight of institutions, particularly the institutions that pose risks to students and taxpayers. Shorter certification periods or provisional certification can allow the Department greater flexibility to respond to an institution that may be exhibiting some signs of concern. This is necessary to ensure that students and taxpayer funds are well protected. Similarly, institutions that do not raise concerns can be certified for longer and with no additional conditions, allowing the Department to focus its resources where greater attention is most needed.

The proposed regulations are necessary to ensure that the Department can more effectively manage its resources in overseeing institutions of higher education. The proposed changes would remove requirements that risked giving institutions longer approval periods when they merit closer scrutiny and would clarify the options available when additional oversight is necessary. The net result would be an oversight and monitoring approach that is more flexible and effective.

Benefits

The proposed regulations would provide several important benefits for the Department that would result in better allocation of its administrative resources. One of these is the proposed elimination of § 668.13(b)(3). This is a recently added provision that requires the Department to issue a decision on a certification within 12 months of the date its participation expires. While it is important for the Department to move with deliberate speed in its oversight work, the institutions that have extended periods with a pending certification application are commonly in this situation due to unresolved issues that must be dealt with first. For instance, an institution may have a pending certification application because it may have an open program review or a Federal or State investigation that could result in significant actions. Being forced to make a decision on that application before the review process or an investigation is completed could result in suboptimal outcomes for the Department, the school, and students. For the institution, the Department may end up placing it on a short certification that would result in an institution facing the burden of redoing paperwork after only a few months. That would carry otherwise unnecessary administrative costs and increase uncertainty for the institution and its students.

The Department would similarly benefit from provisions in proposed § 668.13(c)(1) that provides additional circumstances in which an institution would become provisionally certified. The proposed change in § 668.13(c)(1)(i)(F)—giving the Secretary the ability to place an institution on provisional certification if there is a determination that an institution is at risk of closure—would be a critical tool for better protecting students and taxpayers when an institution appears to be on shaky footing. The same is true for the proposed changes in § 668.13(c)(1)(ii) related to how certain conditions can automatically result in provisional status. Institutional closures can occur very quickly. An institution may face a sudden shock that puts them out of business or the gradual accumulation of a series of smaller problems that culminates in a sudden closure. The pace at which these events occur requires the Department to be nimble in responding to issues and better able to add additional requirements for an institution's participation outside of the normal renewal process. Absent this proposed language, the Department would be in a position where an obviously struggling institution might stay fully certified for years longer, despite the risk it poses.

Such benefits are also related to the provisions in proposed § 668.14(e) that lay out additional conditions that could be placed on an institution if it is in a provisional status. This non-exhaustive list of requirements specifies ways the Department can more easily protect students and taxpayers when concerns arise. Some of these conditions would make it easier to manage the size of a risky institution and would ensure that it does not keep growing when it may be in dire straits. Such size management would be accomplished by imposing conditions such as restricting the growth of an institution, preventing the addition of new programs or locations, or limiting the ability of the institution to serve as a teach-out partner for other schools or to enter into agreements with other institutions to provide portions of an educational program.

Other conditions in proposed § 668.14(e) would give the Department better ability to ensure that it is receiving the information it needs to properly monitor schools and that there are plans for adequately helping students. The additional reporting requirements proposed in § 668.14(e)(7) would help the Department more quickly receive information about issues so it could react in real-time as concerns arise. The proposed requirements in § 668.14(e)(1), meanwhile, would give the Department greater tools to ensure students are protected when a college is at risk of closure. Too often of late, colleges have closed without any meaningful agreement in place for where students could continue their programs. According to SHEEO, of the more than 143,000 students who experienced a closure over 16 years, 70 percent experienced an abrupt closure without a teach-out plan or adequate notice.[257] Additionally, even for those with a teach-out plan, some of the teach-out plans were at another branch campus that later closed. The proposed changes would, therefore, increase the number of meaningful teach-out plans or agreements in place prior to a closure.

To get a sense of the potential effect of these changes, Table 4.4 below breaks down the certification status of all

[257] *sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.*

institutions participating in title IV, HEA programs. This provides some sense of which institutions might currently be subject to additional conditions.

TABLE 4.6—CERTIFICATION STATUS OF INSTITUTIONS PARTICIPATING IN THE TITLE IV, HEA FEDERAL STUDENT AID PROGRAMS

	Fully certified	Provisionally certified	Month-to-month certification
Public	1,732	95	32
Private Nonprofit	1,461	197	57
Private For-Profit	1,120	502	78
Foreign Public	2	1	0
Foreign Private Nonprofit	312	59	60
Foreign Private For-Profit	0	9	1
Total	4,627	863	228

Source: Postsecondary Education Participants Systems as of January 2023.
Note: The month-to-month column is a subset of schools that could be in either the fully certified or the provisionally certified column.

Other provisions in proposed § 668.14 would provide benefits to the Department by increasing the number of entities that could be financially liable for the cost of monies owed to the Department that are unpaid when a college closes. Electronic Announcement (EA) GENERAL 22–16 updated PPA signature requirements for entities exercising substantial control over non-public institutions of higher education.[258] While EA GENERAL 22–16 used a rebuttable presumption, we propose language in § 668.14(a)(3) that would not only require a representative of the institution to sign a PPA, but also an authorized representative of an entity with direct or indirect ownership of a private institution. Historically, the Department has often seen colleges decide to close when faced with significant liabilities instead of paying them. The result is both that the existing liability is not paid and the cost to taxpayers may further increase due to closed school discharges due to students.

To get a sense of how often the Department successfully collects on assessed liabilities, we looked at the amount of institutional liabilities established as an account receivable and processed for repayment, collections, or referral to Treasury following the exhaustion of any applicable appeals over the prior 10 years. This does not include liabilities that were settled or not established as an account receivable and referred to the Department's Finance Office. Items in the latter category could include liabilities related to closed school loan discharges that the Department did not assess because there were no assets remaining at the institution to collect from.

We then compared estimated liabilities to the amount of money collected from institutions for liabilities owed over the same period. The amount collected in a given year is not necessarily from a liability established in that year, as institutions may make payments on payment plans, have liabilities held while they are under appeal, or be in other similar circumstances.

TABLE 4.7—LIABILITIES VERSUS COLLECTIONS FROM INSTITUTIONS

[$ in millions]

Federal fiscal year	Established liabilities	Amounts collected from institutions
2013	19.6	26.9
2014	86.1	37.5
2015	108.1	13.1
2016	64.5	30.8
2017	149.7	34.5
2018	126.2	51.1
2019	142.9	52.3
2020	246.2	31.7
2021	465.7	29.1
2022	203.0	37.0
2013–2022	1,611.9	344.2

Source: Department analysis of data from the Office of Finance and Operations including reports from the Financial Management Support System.

At the same time, there may be many situations where the entities that own the closed college still have resources that could be used to pay liabilities owed to the Department. The provisions in proposed § 668.14(a)(3) would make it clearer that the Department would seek signatures on program participation agreements from those

[258] Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education. *https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education.*

types of entities, making them financially liable for the costs to the Department. In addition to the financial benefits in the form of the greater possibility of transfers from the school or other entities to the Department, this provision would also provide deterrence benefits. Entities considering whether to invest in or otherwise purchase an institution would want to conduct greater levels of due diligence to ensure that they are not supporting a place that might be riskier and, therefore, more likely to generate liabilities the investors would have to repay. The effect should mean that riskier institutions receive less outside investment and are unable to grow unsustainably. In turn, outside investors may then be more willing to consider institutions that generate lower returns due to more sustainable business practices. This could include institutions that do not grow as quickly because they want to ensure they are capable of serving all their students well, or make other choices that place a greater priority on student success.

The added provisions in proposed § 668.14(b)(32) through (34) would also provide benefits to the Department, largely by ensuring that Federal student aid is spent more efficiently, is paying for fewer wasted credits, and is not withheld from students in a way that may harm completion. On the first point, proposed § 668.14(b)(32) would make it harder for institutions to offer programs that lead to licensure or certification whose length far exceeds what is required to obtain the approvals necessary to work in that field in a student's State. While it is important that students get enough aid to finish their program, the Department is concerned that overly long programs may end up generating unnecessary transfers from the Department to the institution in the form of financial aid funding courses that are not needed for the borrower to obtain a position in the field for which they are being prepared. For instance, if a State only requires 1,000 hours for a program but an institution sets its program length at 1,500 hours, then the taxpayer would be supporting significant additional courses that are not required by the state and are potentially superfluous. These types of protections are also necessary for students and families, as some of these additional transfers may come from them in tuition dollars paid, often in the form of greater and unnecessary student loan debt, increasing both the amount students have to pay back and representing potentially a larger share of their annual income. Other parts of paragraph (32), meanwhile, would ensure that colleges enrolling online students from another State would not be able to avoid any relevant key State consumer protection laws regarding closure, recruitment, or misrepresentation. This would help the Federal government by ensuring States can continue to play meaningful roles in the three areas that are most likely to be a source of liabilities in the form of closed school or borrower defense discharges.

Proposed § 668.14(b)(33), meanwhile would reduce the number of credits paid for with title IV, HEA funds that a student is unable to transfer to another institution or use to verify education to potential employers due to a hold on their transcript. The Department is concerned that credits funded with taxpayer money that are on transcripts that an institution will not release due to mistakes on its own part or returns of title IV, HEA funds through the Return of Title IV Funds process represent an unacceptable loss of Federal money. Credits that cannot be redeemed elsewhere toward a credential do not help a student complete a program and increase the potential for the government to pay for the same courses twice. Credits that cannot be verified do not help students obtain employment. While this proposed change may not address broader issues of credit transfer or transcript withholding, it would mitigate some of those problems and at least benefit the government by preventing withholding and wasting of credits due to administrative errors or required functions related to the title IV, HEA programs.

Proposed § 668.14(b)(34) would provide benefits to the Department. Research shows that additional financial aid can provide important supports to help increase the likelihood that students graduate. For example, one study showed that increasing the amount some students were allowed to borrow improved degree completion, later-life earnings, and their ability to repay their loans.[259] This proposed language would prevent situations in which an institution may prevent a student from receiving all the title IV aid they are entitled to without replacing it with other grant aid. This would diminish the risk that students are left with gaps that could otherwise have been covered by title IV aid, which would help them finish their programs.

Students

Many of the same benefits for the Department would also accrue to students. In most cases, college closures are extremely disruptive for students. As found by GAO and SHEEO, only 44 to 47 percent of students enroll elsewhere and even fewer complete college.[260] SHEEO also found that over 100,000 students were affected by sudden closures from July 2004 to June 2020.[261] Proposed § 668.13(e) would benefit students in two ways. First, some potential conditions added to the program participation agreement would protect students from enrolling in an at-risk institution in the first place. Preventing a risky school from growing or adding new programs would mean enrollment does not increase and, therefore, fewer students attending a place that may close. Second, the requirements around teach-out plans and agreements would increase the number of schools where there is better planning on what will happen to students' educational journeys should a college cease operating. That would help more students make informed decisions about when to re-enroll versus walk away from their programs.

Students would also benefit from the proposed requirements in § 668.14(a)(3) around making additional entities responsible for unpaid liabilities. This proposed provision would make outside investors more cautious in engaging with riskier institutions, making it harder for them to grow as quickly. This in turn would reduce the number of students enrolling in risky institutions that might not serve them well.

The proposed changes in § 668.14(b)(32) would provide benefits to students by reducing the likelihood of them paying more for education and training programs that artificially extend their program length beyond what is needed to earn the licensure or certification for which they are being prepared. Programs that are unnecessarily long may depress students' ability to complete, as it introduces more opportunities for life to interfere with academics, and cost students time out of the labor force where they could be earning money in the occupation for which they are training. It can also result in students taking out more student loans than otherwise needed, potentially increasing the risk of unaffordable loan payments, followed by delinquency and default. Similarly, the provision that an institution must abide by State laws

[259] *www.nber.org/papers/w27658.*

[260] *www.gao.gov/products/gao-21-105373*; *sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/*.

[261] *https://sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/*.

related to closure, recruitment, and misrepresentation would ensure that students are protected by key State consumer protection laws regardless of whether they attend an institution that is physically located in their State.

Restrictions on the ability of institutions to withhold transcripts as proposed in § 668.14(b)(33) would benefit students by helping them better leverage the credits they earned in courses paid for by their title IV, HEA aid. Refusing to release a transcript means that students cannot easily transfer their credits. That can arrest progress toward completion elsewhere and result in credits paid for by title IV, HEA dollars that never lead to a credential. A 2020 study by Ithaka S+R estimated that 6.6 million students have credits they are unable to access because their transcript is being withheld by an institution.[262] That study and a 2021 study published by the same organization estimate that the students most affected are likely adult learners, low-income students, and racial and ethnic minority students.[263] This issue inhibits students with some college, but no degree from completing their educational programs, as well as prevents some students with degrees from pursuing further education or finding employment if potential employers are unable to verify that they completed a degree or if they are unable to obtain licensure for the occupation for which they trained.

The proposal in § 668.14(b)(34), meanwhile, would provide benefits to students by ensuring that they receive all the Federal aid they are entitled to. This could result in an increase in transfers from the Department to students as they receive aid that would otherwise have been withheld by the school. Research shows that increased ability to borrow can increase completed credits and improve grade point average, completion, post-college earnings, and loan repayment for some students.[264]

Costs

The proposed regulations would create some modest administrative costs for the Department. These would consist of staffing costs to monitor the additional conditions added to program participation agreements, as well as any increase in changes to an institution's certification status. This cost would likely be larger than the amount the Department spends on reviews of less risky institutions. Beyond these administrative costs, the Department could see a slight increase in costs in the title IV, HEA programs that come in the form of greater transfers to students who would otherwise have received less financial aid under the conditions prohibited in proposed § 668.14(b)(34). As discussed in the benefits section, greater aid could help students finish their programs.

The Department is not anticipating that these proposals would have a significant cost for students. While some of the proposals could affect the institution in which a student chooses to enroll, the Department does not believe that these provisions would likely have a significant effect on whether students enroll in a postsecondary institution at all.

The proposed regulations would establish costs in various forms for institutions. For some, the changes would create costs in the form of reduced transfers from the Department. This would occur in situations such as growth restrictions or preventing institutions from starting new programs or opening new locations. It is not possible to clearly estimate these costs, as which conditions are placed on institutions would be fact-specific and gauging their effect would require judging how many students the institution would then have otherwise enrolled.

Institutions that would be affected by the proposed requirements to limit programs to the required length in their State (or that of a neighboring state in certain limited circumstances) would also face administrative costs to redesign programs. This could require determining what courses to eliminate or how to otherwise make a program shorter. These changes could also reduce transfers from the Department to the institution as aid is no longer provided for the portion of the program that is eliminated.

Other costs to institutions would come in the form of administrative expenses. Institutions that are placed on provisional status may need to submit additional information for reporting purposes, which would require some staff time. Similarly, an institution that becomes provisionally certified may have to submit an application for recertification sooner than anticipated, which would require additional staff time. The extent of these administrative costs would vary depending on the specific demands for an institution and it is not possible to model them.

Ability To Benefit

The HEA requires students who are not high school graduates to fulfill an ATB alternative and enroll in an eligible career pathway program to gain access to title IV, HEA aid. The three ATB alternatives are passing an independently administered ATB test, completing six credits or 225 clock hours of coursework, or enrolling through a State process.[265] Colloquially known as ATB students, these students are eligible for all title IV, HEA aid, including Federal Direct loans. The ATB regulations have not been updated since 1994. In fact, the current Code of Federal Regulations makes no mention of eligible career pathway programs. Changes to the statute have been implemented through subregulatory guidance laid out in Dear Colleague Letters (DCLs). DCL GEN 12–09, 15–09, and 16–09 explained the implementation procedures for the statutory text. Due to the changes over the years, as described in the Background section of this proposed rule, the Department seeks to update, clarify, and streamline the regulations related to ATB.

Benefits

The proposed regulations would provide benefits to States by more clearly establishing the necessary approval processes. This would help more States have their applications approved and reduce the burden of seeking approval. This would be particularly achieved by the proposal to separate the application into an initial process and a subsequent process. Currently, States that apply are required to submit a success rate calculation under current § 668.156(h) as a part of the first application. Doing so is very difficult because the calculation requires that a postsecondary institution is accepting students through its State process for at least one year. This means that a postsecondary institution needs to enroll students without the use of title IV aid for one year to gather enough data to submit a success rate to the Department. Doing so may be cost prohibitive for postsecondary institutions.

The proposed regulations would also benefit institutions by making it easier for them to continue participating in a State process while they work to improve their results. More specifically, reducing the success rate calculation threshold from 95 percent to 85 percent, and the proposal for struggling institutions to meet a 75 percent

[262] *sr.ithaka.org/publications/solving-stranded-credits/.*

[263] *sr.ithaka.org/publications/stranded-credits-a-matter-of-equity/.*

[264] *www.aeaweb.org/articles?id=10.1257/pol.20180279*; *www.nber.org/papers/w24804.*

[265] As of January 2023, there are six States with an approved State process.

threshold for a limited number of years, would give institutions additional opportunities to improve their outcomes before being terminated from a State process. This added benefit would not come at the expense of costs to the student from taking out title IV, HEA aid to attend an eligible career pathway program. This is because the Department proposes to incorporate more guardrails and student protections in the oversight of ATB programs, including documentation and approval by the Department of the eligible career pathway program. That means the proposed changes would not on the whole decrease regulatory oversight.

Institutions that are not struggling to maintain results would also benefit from these proposed regulations. Under current regulations, the success rate calculation includes all institutions combined. The result is that an institution with strong outcomes could be combined with those that are doing worse. Under this proposal, the Department would calculate the success rate for each individual participating institution, therefore allowing other participating institutions that are in compliance with the proposed regulations to continue participation in the State process.

Costs

The proposed regulatory changes would impose additional costs on the Department, postsecondary institutions, and entities that apply for the State process.

The proposed regulations would break up the State process into an initial and subsequent application that must be submitted to the Department after two years of initial approval. This would increase costs to the State and participating institutions. This new application process would be offset because the participating institutions would no longer need to fund their own State process without title IV, HEA program aid to gain enough data to submit a successful application to the Department.

In the proposed initial application, the institution would have to calculate the withdrawal rate for each participating institution, and the Department would verify a sample of eligible career pathway programs offered by participating institutions to verify compliance with the proposed definition under § 668.2. This would increase costs to the State and participating institutions. The increased administrative costs associated with the new outcome metric would be minimal because a participating institution would already know how to calculate the withdrawal rate as it is already required under Administrative Capability regulations. These costs are also worthwhile because they allow for the added benefit that the State could remove poorer performing institutions from its application.

The increase in program eligibility costs associated with the eligible career pathway verification process would be minimal because schools are already required to meet to the definition of an eligible career pathway program under the HEA.

The Department is also proposing to place additional reporting requirements on States, including information on the demographics of students. This would increase administrative burden costs to the State and participating institutions. There is a lack of data about ability to benefit and eligible career pathway programs, and the new reporting the Department would be able to analyze the data and may be able to report trends publicly.

Proposed § 668.157 prescribes the minimum documentation requirements that all eligible career pathway programs would have to meet in the event of an audit, program review, or review and approval by the Department. Currently the Department does not approve eligible career pathway programs, therefore, the proposed regulation would increase costs to any postsecondary institutions that provide an eligible career pathway program. For example, proposed § 668.157(a)(2) would require a government report demonstrate that the eligible career pathway program aligns with the skill needs of industries in the State or regional labor market. Therefore, if no such report exists the program would not be title IV, HEA eligible. Further, under proposed § 668.157(b) the Department would approve every eligible career pathway program for postsecondary institutions that admit students under the six credit and ATB test options. We believe that benefits of the new documentation standards outweigh their costs because the proposed regulations would increase program integrity and oversight and could stop title IV, HEA aid from subsidizing programs that do not meet the statutory definition.

Institutions currently use their best faith to comply with the statute which means there are likely many different interpretations of the HEA. These proposed regulations would set clear expectations and standardize the rules.

Elsewhere in this section under the Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

5. Methodology for Budget Impact and Estimates of Costs, Benefits, and Transfers

In this section we describe the methodology used to estimate the budget impact as well as the main costs, benefits, and transfers. Our modeling and impact only include the Financial Value Transparency and GE parts of the proposed rule. We do not include separate estimates for Financial Responsibility, Administrative Capability, Certification Procedures, or ATB because we anticipate these to have negligible impact on the budget in our primary scenario. We do, however, include a sensitivity analysis for Financial Responsibility.

The main behaviors that drive the direction and magnitudes of the budget impacts of the proposed rule and the quantified costs, benefits, and transfers are the performance of programs and the enrollment and borrowing decisions of students. The Department developed a model based on assumptions regarding enrollment, program performance, student response to program performance, and average amount of title IV, HEA funds per student to estimate the budget impact of these proposed regulations. Additional assumptions about the earnings outcomes and instructional spending associated with program enrollment and tax revenue from additional earnings were used to quantify costs, benefits, and transfers. The model (1) takes into account a program's past results under the D/E and EP rates measure to predict future results, and (2) tracks a GE program's cumulative results across multiple cycles of results to determine title IV, HEA eligibility.

Assumptions

We made assumptions in four areas in order to estimate the budget impact of the proposed regulations: (1) Program performance under the proposed regulations; (2) Student behavior in response to program performance; (3) Borrowing of students under the proposed regulation; and (4) Enrollment growth of students in GE and non-GE programs. Table 5.1 below provides an overview of the main categories of assumptions and the sources. Assumptions that are included in our sensitivity analysis are also highlighted. Wherever possible, our assumptions are based on past performance and student enrollment patterns in data maintained by the Department or documented by scholars in prior research. Additional assumptions needed to quantify costs, benefits, and transfers are described later when we describe the methodology for those calculations.

TABLE 5.1—MAIN ASSUMPTIONS AND SOURCES

Category	Detail	Source	Included in sensitivity?
Assumptions for Budget Impact and Calculation of Costs, Benefits, and Transfers			
Program Performance at Baseline	Share in each performance category at baseline (GE and non-GE programs).	ED data	No.
Enrollment Growth	Annual enrollment growth rate by sector/level and year	Sector-level projections based on Department data.	No.
Program transition between performance categories.	AY2025–26, AY2026–27 onward, separately by loan risk group and for GE and non-GE programs.	Based on Department data + program improvement assumptions.	Yes.
Student response	Share of students who remain in programs, transfer to passing programs, or withdraw or decline to enroll by program performance category and transfer group; separately for GE and non-GE programs.	Assumptions from 2014 RIA and prior work.	Yes.
Student borrowing	Debt changes if students transfer to passing program by program performance, risk group, and cohort; separately for GE and non-GE programs.	Based on Department data	No.
Additional Assumptions for Calculation of Costs, Benefits, and Transfers			
Earnings gain	Average program earnings by risk group and program performance, separately for GE and non-GE programs.	Based on Department data	Yes.
Tax rates	Federal and State average marginal tax and transfer rates	Hendren and Sprung-Keyser 2020 estimates based on CBO.	No.
Instructional cost	Average institution-level instructional expenditure by risk group and program performance; separately for GE and non-GE programs.	IPEDS	No.

Enrollment Growth Assumptions

For AYs 2023 to 2034, the budget model assumes a constant yearly rate of growth or decline in enrollment of students receiving title IV, HEA program funds in GE and non-GE programs in absence of the rule.[266] We compute the average annual rate of change in title IV, HEA enrollment from AY 2016 to AY 2022, separately by the combination of control and credential level. We assume this rate of growth for each type of program for AYs 2023 to 2034 when constructing our baseline enrollment projections.[267] Table 5.2 below reports the assumed average annual percent change in title IV, HEA enrollment.

TABLE 5.2—ANNUAL ENROLLMENT GROWTH RATE (PERCENT) ASSUMPTIONS

	Public	Private, non-profit	Proprietary
UG Certificates	−2.6	−6.9	4.1
Associate's	−3.7	−3.9	−3.7
Bachelor's	−0.5	−0.8	−2.7
Post-BA Certs	4.2	−2.3	−0.4
Master's	3.0	0.5	−1.1
Doctoral	4.9	3.1	−1.7
Professional	0.9	−0.1	−0.4
Grad Certs	1.2	2.0	−0.8

Program Performance Transition Assumptions

The methodology, described in more detail below, models title IV, HEA enrollment over time not for specific programs, but rather by groupings of programs by broad credential level and control, the number of alternative programs available, whether the program is GE or non-GE, and whether the program passes or fails the D/E and EP metrics. The model estimates the flow of students between these groups due to changes in program performance over time and reflects assumptions for the share of enrollment that would transition between the following four performance categories in each year:

- Passing (includes with and without data)
- Failing D/E rate only
- Failing EP rate only
- Failing both D/E and EP rates

A GE program becomes ineligible if it fails either the D/E or EP rate measures in two out of three consecutive years. We assume that ineligible programs remain that way for all future years and, therefore, do not model performance transitions after ineligibility is reached. The model applies different assumptions for the first year of transition (from year 2025 to 2026) and subsequent years (after 2026). It assumes that the rates of program transition reach a steady state in 2027. We assume modest improvement in performance, indicated by a reduction in the rate of failing and an increase in the rate of passing, among programs that fail one of the metrics, and an increase in the rate of passing again, among GE programs that pass the metrics. All transition probabilities are estimated separately for GE and non-GE programs and for four

[266] AYs 2023 to 2034 are transformed to FYs 2022 to 2023 later in the estimation process.

[267] The number of programs in proprietary post-BA certificates and proprietary professional degrees was too low to reliably compute a growth rate. Therefore, we assumed a rate equal to the overall proprietary rate of −0.4%.

aggregate groups: proprietary 2-year or less; public or non-profit 2-year or less; 4-year programs; graduate programs.[268]

The assumptions for the 2025 to 2026 transition are taken directly from an observed comparison of actual rates results for two consecutive cohorts of students. The initial assignment of performance categories in 2025 is based on the 2022 PPD for students who completed programs in award years 2015 and 2016, whose earnings are measured in calendar years 2018 and 2019. The program transition assumptions for 2025 to 2026 are based on the outcomes for this cohort of students along with the earnings outcomes of students who completed programs in award years 2016 and 2017 (earnings measured in calendar years 2019 and 2020) and debt of students who completed programs in award years 2017 and 2018. A new set of D/E and EP metrics was computed for each program using this additional two-year cohort. Programs with fewer than 30 completers or with fewer than 30 completers with earnings records are determined to be passing, though can transition out of this category between years. The share of enrollment that transitions from each performance category to another is computed separately for each group.[269]

The left panels of Tables 5.3 and Table 5.4 report the program transition assumptions from 2025 to 2026 for non-GE and GE programs, respectively. Program performance for non-GE is quite stable, with 95.8 percent of passing enrollment in two-year or less public and non-profit expected to remain in passing programs. Persistence rates are even higher among 4-year and graduate programs. Among programs that fail the EP threshold, a relatively high share—more than one-third among 2-year and less programs—would be at passing programs in a subsequent year. The performance of GE programs is only slightly less persistent than that of non-GE programs. Note that GE programs would become ineligible for title IV, HEA funds the following year if they fail the same metric two years in a row. Among enrollment in less than two-year proprietary programs that fail the EP metric in 2025, 21.7 percent would pass in 2026 due to a combination of passing with data and no data.

The observed results also serve as the baseline for each subsequent transition of results (2026 to 2027, 2027 to 2028, etc.). The model applies additional assumptions from this baseline for each transition beginning with 2026 to 2027. Because the baseline assumptions are the actual observed results of programs based on a cohort of students that completed programs prior to the Department's GE rulemaking efforts, these transition assumptions do not account for changes that institutions have made to their programs in response to the Department's regulatory actions or would make after the final regulations are published.

As done with analysis of the 2014 rule, the Department assumes that institutions at risk of warning or sanction would take at least some steps to improve program performance by improving program quality, job placement, and lowering prices (leading to lower levels of debt), beginning with the 2026 to 2027 transition. There is evidence that institutions have responded to past GE measures by aiming to improve outcomes or redirecting enrollment from low-performing programs. Institutions subject to GE regulations have experienced slower enrollment and those that pass GE thresholds tend to have a lower likelihood of program or institution closure.[270] Some leaders of institutions subject to GE regulation in 2014 did make improvements, such as lowering costs, increasing job placement and academic support staff, and other changes.[271] We account for this by increasing the baseline observed probability of having a passing result by five percentage points for programs with at least one failing metric in 2026. Additionally, we improve the baseline observed probability of passing GE programs having a sequential passing result by two and a half percentage points to capture the incentive that currently passing programs have to remain that way. These new rates are shown in the right panels of Tables 5.3 and 5.4.

We assume the same rates of transition between performance categories for subsequent years as we do for the 2026 to 2027 transitions.

Since the budget impact and net costs, benefits, and transfers depend on assumptions about institutional performance after the rule is enacted, we incorporate alternative assumptions about these transitions in our sensitivity analysis.

TABLE 5.3—PROGRAM TRANSITION ASSUMPTIONS NON-GE PROGRAMS

	Percent in year t+1 status (2026)				Percent in year t+1 status (2027–2033)			
	Pass	Fail D/E only	Fail EP only	Fail both	Pass	Fail D/E only	Fail EP only	Fail both
Public and Non-Profit 2-year or less								
Year t Status:								
Pass	95.8	0.0	4.1	0.1	95.8	0.0	4.1	0.1
Fail D/E only	9.8	86.0	0.0	4.2	14.8	81.0	0.0	4.2
Fail EP only	37.8	0.0	62.0	0.1	42.8	0.0	57.0	0.1
Fail Both	21.7	5.2	3.2	69.9	26.7	5.2	3.2	64.9
4-year								
Year t Status:								
Pass	99.0	0.3	0.5	0.2	99.0	0.3	0.5	0.2
Fail D/E only	26.9	66.1	0.0	7.0	31.9	61.1	0.0	7.0
Fail EP only	36.8	0.0	58.7	4.6	41.8	0.0	53.7	4.6

[268] The budget simulations separate lower and upper division enrollment in 4-year programs. We assume the same program transition rates for both.

[269] In order to produce transition rates that are stable over time and that do not include secular trends in passing or failing rates (which are already reflected in our program growth assumptions), we compute transition rates from Year 1 to Year 2 and from Year 2 to Year 1 and average them to generate a stable rate shown in the tables.

[270] Fountain, J. (2019). The Effect of the Gainful Employment Regulatory Uncertainty on Student Enrollment at For-Profit Institutions of Higher Education. Research in Higher Education, Springer; Association for Institutional Research, vol. 60(8), 1065–1089. Kelchen, R. & Liu, Z. (2022) Did Gainful Employment Regulations Result in College and Program Closures? *Education Finance and Policy;* 17 (3): 454–478.

[271] Hentschke, G.C., Parry, S.C. Innovation in Times of Regulatory Uncertainty: Responses to the Threat of ''Gainful Employment''. Innov High Educ 40, 97–109 (2015). *doi.org/10.1007/s10755-014-9298-z.*

TABLE 5.3—PROGRAM TRANSITION ASSUMPTIONS NON-GE PROGRAMS—Continued

	Percent in year t+1 status (2026)				Percent in year t+1 status (2027–2033)			
	Pass	Fail D/E only	Fail EP only	Fail both	Pass	Fail D/E only	Fail EP only	Fail both
Fail Both	22.5	10.6	7.0	59.8	27.5	10.6	7.0	54.8
Graduate								
Year t Status:								
Pass	98.4	1.5	0.0	0.0	98.4	1.5	0.0	0.0
Fail D/E only	20.2	78.7	0.0	1.1	25.2	73.7	0.0	1.1
Fail EP only	75.6	0.0	24.4	0.0	80.6	0.0	19.4	0.0
Fail Both	21.5	38.8	0.0	39.7	26.5	38.8	0.0	34.7

TABLE 5.4—PROGRAM TRANSITION ASSUMPTIONS GE PROGRAMS

	Share in year t+1 status (2026)				Share in year t+1 status (2027–2033)			
	Pass	Fail D/E only	Fail EP only	Fail both	Pass	Fail D/E only	Fail EP only	Fail both
Proprietary 2-year or less								
Year t Status:								
Pass	93.4	0.6	5.8	0.1	95.9	0.4	3.6	0.1
Fail D/E only	10.0	82.1	0.0	7.9	15.0	77.1	0.0	7.9
Fail EP only	21.7	0.0	77.8	0.6	26.7	0.0	72.8	0.6
Fail Both	10.0	5.5	6.9	77.6	15.0	5.5	6.9	72.6
Public and Non-Profit 2-year or less								
Year t Status:								
Pass	92.4	0.5	6.2	0.9	94.9	0.4	4.2	0.6
Fail D/E only	14.0	31.2	0.0	54.8	19.0	26.2	0.0	54.8
Fail EP only	38.8	0.0	57.6	3.6	43.8	0.0	52.6	3.6
Fail Both	34.8	1.5	2.5	61.2	39.8	1.5	2.5	56.2
4-year								
Year t Status:								
Pass	94.6	4.8	0.2	0.4	97.1	2.6	0.1	0.2
Fail D/E only	18.6	72.5	0.0	8.9	23.6	67.5	0.0	8.9
Fail EP only	14.0	0.0	86.0	0.0	19.0	0.0	81.0	0.0
Fail Both	5.1	37.8	0.0	57.0	10.1	37.8	0.0	52.0
Graduate								
Year t Status:								
Pass	97.3	2.6	0.0	0.1	99.8	0.2	0.0	0.0
Fail D/E only	15.1	83.0	0.0	1.9	20.1	78.0	0.0	1.9
Fail EP only	100.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0
Fail Both	8.7	37.4	0.0	53.9	13.7	37.4	0.0	48.9

Student Response Assumptions

The Department's model applies assumptions for the probability that a current or potential student would transfer or choose a different program, remain in or choose the same program, or withdraw from or not enroll in any postsecondary program in reaction to a program's performance. The model assumes that student response would be greater when a program becomes ineligible for title IV, HEA aid than when a program has a single year of inadequate performance, which initiates warnings and the acknowledgment requirement for GE programs, an acknowledgement requirement non-GE programs that fail D/E, and publicly reported performance information in the ED portal for both GE and non-GE programs. We also let the rates of transfer and withdrawal or non-enrollment differ with the number of alternative transfer options available to students enrolled (or planning to enroll) in a failing program. Specifically, building on the analysis presented in ''Measuring Students' Alternative Options'' above, we categorize individual programs into one of four categories:

- High transfer options: Have at least one passing program in the same credential level at the same institution and in a related field (as indicated by being in the same 2-digit CIP code).
- Medium transfer options: Have a passing transfer option within the same ZIP3, credential level, and narrow field (4-digit CIP code).
- Low transfer options: Have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code.
- Few transfer options: Do not have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code. Students in these programs would be required to enroll in either a distance education program or enroll outside their ZIP3. As shown in ''Measuring Students' Alternative Options,'' all failing programs have at least one non-failing program in the same credential level and 2-digit CIP code in the same State.

For each of the four categories above, we make assumptions for each type of student transition. Programs with passing metrics are assumed to retain all of their students.

Students that transfer are assumed to transfer to passing programs, and for the purposes of the budget simulation this includes programs with an insufficient n-size. We assume that rates of withdrawal (or non-enrollment) and transfer are higher for ineligible programs than those where only the warning/acknowledgment is required (GE programs with one year of a failing metric and non-GE programs with a failing D/E metric). We also assume that rates of transfer are weakly decreasing (and rates of dropout and remaining in program are both weakly increasing) as programs have fewer transfer options. These assumptions regarding student responses to program results are provided in Table 5.5 and Table 5.6. Coupled with the scenarios presented in the ''Sensitivity Analysis,'' these assumptions are intended to provide a reasonable estimation of the range of impact that the proposed regulations could have on the budget and overall social costs, benefits, and transfers.

The assumptions above are based on our best judgment and from extant research that we view as reasonable guides to the share of students likely to transfer to or choose another program when their program loses title IV, HEA eligibility. For instance, a 2021 GAO report found that about half of non-completing students who were at closed institutions transferred.[272] This magnitude is similar to recent analysis that found that 47 percent of students reenrolled after an institutional closure.[273] The authors of this report find very little movement from public or non-profit institutions into for-profit institutions, but considerable movement in the other direction. For example, about half of re-enrollees at closed for-profit 2-year institutions moved to public 2-year institutions, whereas less than 3% of re-enrollees at closed public and private non-profit 4-year institutions moved to for-profit institutions. Other evidence from historical cohort default rate sanctions indicates a transfer rate of about half of students at for-profit colleges that were subject to loss of federal financial aid disbursement eligibility, with much of that shift to public two-year institutions.[274] The Department also conducted its own internal analysis of ITT Technical Institute closures. About half of students subject to the closure re-enrolled elsewhere (relative to pre-closure patterns). The majority of students that re-enrolled did so in the same two-digit CIP code. Of Associate's degree students that re-enrolled, 45% transferred to a public institution, 41% transferred to a different for-profit institution, and 13% transferred to a private non-profit institution. Most remained in Associate's or certificate programs. Of Bachelor's degree students that re-enrolled, 54% transferred to a different for-profit institution, 25% shifted to a public institution, and 21% transferred to a private non-profit institution.

Data from the Beginning Postsecondary Students Longitudinal 2012/2017 study provides further information on students' general patterns through and across postsecondary institutions (not specific to responses to sanctions or closures). Of students that started at a public or private non-profit 4-year institution, about 3 percent shifted to a for-profit institution within 5 years. Of those that began at a public or private non-profit 2-year institution, about 8 percent shifted to a for-profit institution within 5 years.

TABLE 5.5—STUDENT RESPONSE ASSUMPTIONS, BY PROGRAM RESULT AND NUMBER OF ALTERNATIVE PROGRAM OPTIONS AVAILABLE

Program result →	Pass			Fail once			Ineligible		
Student response →	Remain	Transfer	Withdrawal/ non-enrollment	Remain	Transfer	Withdrawal/ non-enrollment	Remain	Transfer	Withdrawal/ non-enrollment
GE:									
High Alternatives	1.00	0.00	0.00	0.40	0.45	0.15	0.20	0.60	0.20
Medium Alternatives	1.00	0.00	0.00	0.45	0.35	0.20	0.20	0.55	0.25
Low Alternatives	1.00	0.00	0.00	0.50	0.30	0.20	0.25	0.45	0.30
Few Alternatives	1.00	0.00	0.00	0.55	0.25	0.20	0.25	0.35	0.40
Non-GE:									
High Alternatives	1.00	0.00	0.00	0.80	0.20	0.00	na	na	na
Medium Alternatives	1.00	0.00	0.00	0.85	0.15	0.00	na	na	na
Low Alternatives	1.00	0.00	0.00	0.90	0.10	0.00	na	na	na
Few Alternatives	1.00	0.00	0.00	0.95	0.05	0.00	na	na	na

In Table 5.6, we provide detail of the assumptions of the destinations among students who transfer, separately for the following groups:[275]

- Risk 1 (Proprietary <=2 year)
- Risk 2 (Public, NonProfit <=2 year)
- Risk 3 (Lower division 4 year)
- Risk 4 (Upper division 4 year)
- Risk 5 (Graduate)

TABLE 5.6—STUDENT RESPONSE ASSUMPTIONS, AMONG TRANSFERRING STUDENTS, SHARE SHIFTING SECTORS

	Shift to GE programs					Shift to non-GE programs			
Shift from . . .	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5	Risk 2	Risk 3	Risk 4	Risk 5
GE:									
Risk 1	0.50	0.30	0.10	0.00	0.00	0.10	0.00	0.00	0.00
Risk 2	0.30	0.50	0.10	0.00	0.00	0.10	0.00	0.00	0.00
Risk 3	0.00	0.00	0.80	0.00	0.00	0.00	0.20	0.00	0.00
Risk 4	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.20	0.00

[272] *https://www.gao.gov/products/gao-22-104403.*

[273] *sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.*

[274] Cellini, S.R., Darolia, R., & Turner, L.J. (2020). Where do students go when for-profit colleges lose federal aid? *American Economic Journal: Economic Policy,* 12(2), 46–83.

[275] Lower division includes students in their first two years of undergraduate education. Upper division includes students in their third year or higher.

TABLE 5.6—STUDENT RESPONSE ASSUMPTIONS, AMONG TRANSFERRING STUDENTS, SHARE SHIFTING SECTORS—Continued

	Shift to GE programs					Shift to non-GE programs			
Shift from . . .	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5	Risk 2	Risk 3	Risk 4	Risk 5
Risk 5	0.00	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.20
Non-GE:									
Risk 2	0.05	0.05	0.00	0.00	0.00	0.70	0.20	0.00	0.00
Risk 3	0.00	0.00	0.05	0.00	0.00	0.05	0.90	0.00	0.00
Risk 4	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.95	0.00
Risk 5	0.00	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.95

As we describe below, the assumptions for student responses are applied to the estimated enrollment in each aggregate group after factoring in enrollment growth.

Student Borrowing Assumptions

Analyses in the Regulatory Impact Analysis of the 2014 Prior Rule assumed that student debt was unchanged if students transferred from failing to passing programs, but we believe this assumption to be too conservative given that one goal of the GE rule is to reduce the debt burden of students. Recall that tables 3.29 and 3.30 above reported the percent difference in mean debt between failing GE and non-GE programs and their transfer options, by credential level and 2-digit CIP code. Across all subjects and credential levels, debt is 22 percent lower at alternative programs than at failing GE programs. At non-GE programs, there is no aggregate debt difference between failing programs and their alternatives, though this masks heterogeneity across credential levels. For graduate degree programs, movement to alternative programs from failing programs is associated with lower debt levels while movement from failing to passing Associate's programs is associated with an increase in debt. Students that drop out of (or decline to enroll in) failing programs are assumed to acquire no educational debt.

To incorporate changes in average loan volume associated with student transitions, we compute average subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment separately for GE and non-GE programs by risk group and program performance group. These averages are then applied to shifts in enrollment to generate changes in the amount of aid.

Methodology for Net Budget Impact

The budget model estimates a yearly enrollment for AYs 2023 to 2034 and the distribution of those enrollments in programs characterized by D/E and EP performance, risk group, transfer category, and whether it is a GE program. This enrollment is projected for a baseline (in absence of the proposed rule) and under the proposed policy. The net budget impact for each year is calculated by applying assumptions regarding the average amount of title IV, HEA program funds received by this distribution of enrollments across groups of programs. The difference in these two scenarios provides the Department's estimate of the impact of the proposed policy. We do not simulate the impact on the rule at the individual program level because doing so would necessitate very specific assumptions about which programs' students transfer to in response to the regulations. While we made such assumptions in the ''Measuring Students' Alternatives'' section above, we do not think it is analytically tractable to do for all years. Therefore, for the purposes of budget modeling, we perform analysis with aggregations of programs into groups defined by the following: [276]

- Five student loan model risk groups: (1) 2-year (and below) for-profit; (2) 2-year (and below) public or non-profit; (3) 4-year (any control) lower division, which is students in their first two years of a Bachelor's program; (4) 4-year (any control) upper division, which is students beyond their first two years of a Bachelor's program; (5) Graduate student (any control).[277]
- Four transfer categories (high, medium, low, few alternatives) by which the student transfer rates are assumed to differ. This is a program-level characteristic that is assumed not to change.
- Two GE program categories (GE and eligible non-GE) by which the program transitions are assumed to differ.
- Six performance categories: Pass, Fail D/E, Fail EP, Fail Both, Pre-ineligible (a program's current enrollment is Title IV, HEA eligible, but next year's enrollment would not be), Ineligible (current enrollment is not Title IV, HEA eligible).

We refer to groups defined by these characteristics as ''program aggregate'' groups.

We first generate a projected baseline (in absence of the proposed rule) enrollment, Pell volume, and loan volume for each of the program aggregate groups from 2023 to 2033. This baseline projection includes several steps. First, we compute average annual growth rate for each control by credential level from 2016 to 2022. These growth rates are presented in Table 5.5. We then apply these annual growth rates to the actual enrollment by program in 2022 to forecast enrollment in each program in 2023. This step is repeated for each year to get projected enrollment by program through 2033. We then compute average Pell, subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment by risk group, program performance group, and GE vs. non-GE for 2022. These averages are then adjusted according to the PB2024 loan volume and Pell Grant baseline assumptions for the change in average loan by loan type and the change in average Pell Grant. We then multiply the projected enrollment for each program by these average aid amounts to get projected total aid volume by program through 2033. Finally, we sum the enrollment and aid amounts across programs for each year to get enrollment and aid volume by program aggregate group, 2023 to 2033.

The most significant task is to generate projected enrollment, Pell volume, and loan volume for each of the program aggregate groups from 2023 to 2033 with the rule in place. We assume the first set of rates would be released in 2025 award year, so this is starting year for our projections. Projecting counterfactual enrollment and aid volumes involves several steps:

Step 1: Start with the enrollment by program aggregate group in 2025. In this first year there are no programs that are ineligible for Title IV, HEA funding.

Step 2: Apply the student transition assumptions to the enrollment by

[276] Note that non-GE programs do not include risk group 1 (2-year and below for-profit institutions) or the pre-ineligible or ineligible performance categories. Some groups also do not have all four transfer group categories. There are 184 total groups used in the analysis.

program aggregate group. This generates estimates of the enrollment that is expected to remain enrolled in the program aggregate group, the enrollment that is expected to drop out of postsecondary enrollment, and the enrollment that is expected to transfer to a different program aggregate group.

Step 3: Compute new estimated enrollment for the start of 2026 (before the second program performance is revealed) for each cell by adding the remaining enrollment to the enrollment that is expected to transfer into that group. We assume that (1) students transfer from failing or ineligible programs to passing programs in the same transfer group and GE program group; (2) Students in risk groups 3 (lower division 4-year), 4 (upper division 4-year college) or 5 (graduate) stay in those risk groups; (3) Students in risk group 1 can shift to risk groups 2 or 3; (4) Students in risk group 2 can shift to risk groups 1 or 3. Therefore, we permit enrollment to shift between proprietary and public or non-profit certificate programs and from certificate and Associate's programs to lower-division Bachelor's programs. We also allow enrollment to shift between GE and non-GE program, based on the assumptions listed in Table 5.6.

Step 4: Determine the change in aggregate baseline enrollment between 2025 and 2026 for each risk group and allocate these additional enrollments to each program aggregate group in proportion to the group enrollment computed in Step 3.

Step 5: Apply the program transition assumptions to the aggregate group enrollment from Step 4. This results in estimates of the enrollment that would stay within or shift from each performance category to another performance category in the next year. This mapping would differ for GE and non-GE programs and by risk group, as reported in Table 5.3 and 5.4 above. For non-GE programs, every performance category can shift enrollment to every performance category. For GE programs, however, enrollment in each failure category would not remain in the same category because if a metric is failed twice, this enrollment would move to pre-ineligibility. The possible program transitions for GE programs are:

- Pass → Pass, Fail D/E, Fail EP, Fail Both
- Fail D/E → Pass, Fail EP, Pre-Ineligible
- Fail EP → Pass, Fail D/E, Pre-Ineligible
- Fail Both → Pass, Pre-Ineligible

Step 6: Compute new estimated enrollment at end of 2026 (after program performance is revealed) for each program aggregate group by adding the number that stay in the same performance category plus the number that shift from other performance categories.

Step 7: Repeat steps 1 to 6 above using the end of 2026 enrollment by group as the starting point for 2027 and repeat through 2034. The only addition is that in Step 5, two more program transitions are possible for GE programs: Pre-Ineligible moves to Ineligible and Ineligible remains Ineligible.

Step 8: Generate projected Pell and loan volume by program aggregate group from AY 2023 to 2034 under the proposed rule. We multiply the projected enrollment by group by average aid amounts (Pell and loan volume) to get projected total aid amounts by group through 2034. Any enrollment that has dropped out (not enrolled in postsecondary) or in the ineligible category get zero Pell and loan amounts. Note that the average aid amounts by cell come from the PB projections, so are allowed to vary over time.

Step 9: Shift Pell and loan volume under the proposed rule from AYs 2025 to 2034 to FYs 2025 to 2033 for calculating budget cost estimates.

A net savings for the title IV, HEA programs comes through four mechanisms. The primary source is from students who drop out of postsecondary education in the year after their program receives a failing D/E or EP rate or becomes ineligible. The second is for the smaller number of students who remain enrolled at a program that becomes ineligible for title IV, HEA program funds. Third, we assume a budget impact on the title IV, HEA programs from students who transfer from programs that are failing to better-performing programs because the typical aid levels differ between programs according to risk group and program performance. For instance, subsidized direct loan borrowing is 24 percent less ($2044 vs. $1547) for students at GE programs failing the D/E metric in risk group 1 than in passing programs in the same risk group in 2026.

Finally, consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the title IV, HEA programs also reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. To determine the estimated budget impact from reduced loan volume, the difference in yearly loan volumes between the baseline and policy scenarios were calculated as a percent of baseline scenario volumes. This generated an adjustment factor that was applied to loan volumes in the Student Loan Model (SLM) for each cohort, loan type, and risk group combination in the President's Budget for FY2024 (PB2024). The reduced loan volumes are also expected to result in some decrease in future consolidations which is also captured in the model run. Since the implied subsidy rate for each loan type differs by risk group, enrollment shifts to risk groups with greater expected repayment would generate a net budget savings. Since our analysis does not incorporate differences in subsidy rates between programs in the same risk group, such as between programs passing and failing the D/E or EP metrics, these estimates potentially understate the increase in expected repayment resulting from the proposed regulations.

Methodology for Costs, Benefits, and Transfers

The estimated enrollment in each aggregate program group is used to quantify the costs, benefits, and transfers resulting from the proposed regulations for each year from 2023 to 2033. As described in the Discussion of Costs, Benefits, and Transfers, we quantify an earnings gain for students from attending higher financial value programs and the additional tax revenue that comes from that additional earnings. We quantify the cost associated with additional instructional expenses to educate students who shift to different types of programs and the transfer of instructional expenses as students shift programs. We also estimate the transfer of title IV, HEA program funds from programs that lose students to programs that gain students.

Earnings Gain Benefit

A major goal of greater transparency and accountability is to shift students towards higher financial value programs—those with greater earnings potential, lower debt, or both. To quantify the earnings gain associated with the proposed regulation, we estimate the aggregate annual earnings of would-be program graduates under the baseline and policy scenarios and take the difference. For each risk group and program performance group, we compute the enrollment-weighted average of median program earnings. Average earnings for programs that have become ineligible is assumed to be the average of median earnings for programs in the three failing categories, weighted by the enrollment share in these categories. This captures, for instance, that the earnings of 2-year programs that become ineligible are quite lower than those that enroll graduate students. Since we have simulated enrollment, but not completion, annual program enrollment is converted into annual program completions by applying a ratio that differs for 2-year programs or less, Bachelor's degree programs, or graduate programs.[278] Earnings for students that do not complete are not available and thus not included in our calculations. Students that drop out of failing programs (or decline to enroll altogether) are assumed to receive earnings equal to the median earnings of high school graduates in the State (the same measure used for the Earnings Threshold). Therefore, earnings could increase for this group if students reduce enrollment in programs leading to earnings less than a high school graduate. We estimate aggregate earnings by program group by multiplying enrollment by average earnings, reported in Table 5.7, and the completion ratio.

TABLE 5.7—AVERAGE PROGRAM EARNINGS BY GROUP

[$2019]

	Pass	Fall D/E	Fail EP only	Fail both	Ineligible
GE Programs					
Proprietary 2yr or less	38,147	28,673	18,950	18,498	20,408
Public/NP 2yr or less	37,235	30,234	19,904	18,400	19,789
Bachelor Lower	51,096	31,160	5,147	23,491	30,427
Bachelor Upper	51,096	31,160	5,147	23,491	30,427
Graduate	66,848	47,523	15,891	19,972	46,056
Non-GE Programs					
Public/NP 2yr or less	36,473	29,626	23,502	19,071	N/A
Bachelor Lower	47,602	28,723	19,813	20,729	N/A
Bachelor Upper	47,602	28,723	19,813	20,729	N/A
Graduate	74,631	55,654	19,765	22,747	N/A

Students experience earnings gain each year they work following program completion. We compute the earnings benefit over the analysis window by giving 2026 completers 7 years of earnings gains, 2027 completers 6 years of earnings gains, and so on. The earnings gain of students that graduate during 2033 are only measured for one year. In reality program graduates would experience an earnings gain annually over their entire working career; our estimates likely understate the total likely earnings benefit of the policy.

However, our approach can overstate the earnings gain of students that shift programs if students experience a smaller earnings gain than the average difference between passing and failing programs within each GE-by-risk group in Table 5.7. To account for this, we apply an additional adjustment factor to the aggregate earnings difference to quantify how much of the earnings difference is accounted for by programs.

There is not consensus in the research literature on the magnitude of this parameter, with some studies finding very large impacts of specific programs or institutions on earnings[279] and others finding smaller impacts.[280] Unfortunately, many of these studies are set in specific contexts (*e.g.,* only public four-year universities in one state) and most look at institutions overall rather than programs, which may not extrapolate to our setting given the large outcome variation across programs in the same institution.

To select the value used for this adjustment factor, we compared the average earnings difference between passing and failing programs (conditional on credential level) before versus after controlling for the rich demographic characteristics described in ''Student Demographic Analysis.'' We find that this conditional earnings difference declined by approximately 25 percent after controlling for the share of students in each race/ethnic category, the share of students that are male, independent, first-generation, and a Pell recipient, and the average family income of students.[281] Our primary estimates thus adjust the raw earnings difference in Table 5.7 down using an adjustment factor of 75 percent.

Given the uncertainty around the proper adjustment factor to use, we include a range of values in the sensitivity analysis. We seek public comment as to how best to craft any further assumptions of the earnings benefits of the Financial Value Transparency and Gainful Employment components of the proposed rule.

In the analysis of alternative options above, we showed the expected change in earnings for students that transfer from failing programs for each credential-level by 2-digit CIP code. Across all credential levels, students that shift from failing GE programs were expected to increase annual earnings by 44 percent and those transferring from failing non-GE programs were expected to increase annual earnings by 22 percent. These estimates are in line with those from Table 5.7 and used in the benefit impact.

[278] The ratios used are 11.5% for 2-year or less, 16.5% for Bachelor's programs, and 27.3% for graduate programs. These are the ratio between number of title IV, HEA completers in the two-year earnings cohort and the average title IV, HEA enrollment in the 2016 and 2017 Award Years.

[279] Hoekstra, Mark (2009) The Effect of Attending the Flagship State University on Earnings: A Discontinuity-Based Approach, Review of Economics and Statistics 2009, 91(4): 717–724.

Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education,* C.M. Hoxby and K.M. Stange (eds). University of Chicago Press: Chicago, 2019.

Andrews, R.J., & Stange, K.M. (2019). Price regulation, price discrimination, and equality of opportunity in higher education: Evidence from Texas. *American Economic Journal: Economic Policy,* 11.4, 31–65.

Andrews, Rodney, Scott Imberman, Michael Lovenheim, & Kevin Stange (2022). The Returns to College Major Choice: Average and Distributional Effects, Career Trajectories, and Earnings Variability. NBER Working Paper 30331, August 2022.

[280] Mountjoy, Jack and Brent Hickman (2021). The Returns to College(s): Relative Value-Added and Match Effects in Higher Education. NBER Working Paper 29276, September 2021.

[281] Note that both the ''raw'' and fully controlled regressions include indicators for credential level, as enrollment is not permitted to move across credential levels in our budget simulations other than modest shift from 2-year programs to lower-division four-year programs.

Fiscal Externality Benefit

The increased earnings of program graduates would generate additional Federal and State tax revenue and reductions in transfer program expenditure. To the earnings gain, we multiply an average marginal tax and transfer rate of 18.6 percent to estimate the fiscal benefit. This rate was computed in Hendren and Sprung-Keyser (2020) specifically to estimate the fiscal externality of earnings gains stemming from improvement in college quality, so it is appropriate for use in our setting.[282] The rate is derived from 2016 CBO estimates and includes Federal and State income taxes and transfers from the Supplemental Nutrition Assistance Program (SNAP) but excludes payroll taxes, housing vouchers, and other safety-net programs. Note that this benefit is not included in our budget impact estimates.

Instructional Spending Cost and Transfer

To determine the additional cost of educating students that shift from one type of program to another or the cost savings from students who chose not to enroll, we estimate the aggregate annual instructional spending under the baseline and policy scenarios and take the difference. We used the instructional expense per FTE enrollee data from IPEDS to calculate the enrollment-weighted average institutional-level instructional expense per FTE student for programs by risk group and performance result, separately for GE programs and non-GE programs. Average spending for programs that have become ineligible is assumed to be the average of the three failing categories, weighted by the enrollment share in these categories. These estimates are reported in Table 5.8. We estimate aggregate spending by program group by multiplying enrollment from 2023 through 2033 by average spending.

TABLE 5.8—AVERAGE INSTRUCTIONAL COST PER FTE BY GROUP

	Pass	Fail D/E	Fail EP only	Fail both	Ineligible
GE Programs:					
Proprietary 2yr or less	4,392	3,038	4,347	3,957	4,045
Public/NP 2yr or less	7,334	5,859	4,956	3,681	4,838
Bachelor Lower	3,671	2,667	844	3,396	2,721
Bachelor Upper	3,671	2,667	844	3,396	2,721
Graduate	5,309	3,896	1,837	5,151	3,959
Non-GE Programs:					
Public/NP 2yr or less	6,411	5,197	5,940	4,357	N/A
Bachelor Lower	11,274	7,467	8,572	11,419	N/A
Bachelor Upper	11,274	7,467	8,572	11,419	N/A
Graduate	15,696	15,874	7,528	24,355	N/A

Note that since we are using institution-level rather than program-level spending, this will not fully capture spending differences between undergraduate and graduate enrollment, between upper and lower division, and across field of study.[283]

To calculate the transfer of instructional expenses from failing to passing programs, we multiply the average instructional expense per enrollee shown in 5.7 by the estimated number of annual student transfers for 2023 to 2033 from each risk group and failing category.

Student Aid Transfers

To calculate the amounts of student aid that could transfer with students each year, we multiply the estimated number of students receiving title IV, HEA program funds transferring from ineligible or failing GE and non-GE programs to passing programs in each risk category each year by the average Pell Grant, Stafford subsidized loan, unsubsidized loan, PLUS loan, and GRAD PLUS loan per enrollment in the same categories.

To annualize the amount of benefits, costs, and title IV, HEA program fund transfers from 2023 to 2033, we calculate the net present value (NPV) of the yearly amounts using a discount rate of 3 percent and a discount rate of 7 percent and annualize it over 10 years.

6. Net Budget Impacts

These proposed regulations are estimated to have a net Federal budget impact of $−12.6 billion, consisting of $−8.6 billion in reduced Pell Grants and $−4.1 billion for loan cohorts 2024 to 2033.[284] A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The baseline for estimating the cost of these final regulations is the President's Budget for 2024 (PB2024) as modified for the proposed changes to the REPAYE plan published in the NPRM dated January 10, 2023. The GE and Financial Transparency provisions are responsible for the estimated net budget impact of the proposed regulations, as described below. The other provisions are considered in the Other Provisions section of this Net Budget Impact topic.

Gainful Employment and Financial Transparency

The proposed regulations are estimated to shift enrollment towards programs with lower debt-to-earnings or higher median earnings or both, and away from programs that fail either of the two performance metrics. The vast majority of students are assumed to resume their education at the same or another program in the event they are warned about poor program performance or if their program loses eligibility. The proposed regulations are

[282] Hendren, Nathaniel, and Ben Sprung-Keyser. 2020. ''A Unified Welfare Analysis of Government Policies.'' Quarterly Journal of Economics 135(3): 1209–1318.

[283] This may cause our estimates to slightly understate the instructional cost impact since failing programs are disproportionately in lower-earning fields and lower credential levels, which tend to have lower instructional costs. Though we anticipate most movement will be within field and credential level, which would mute this effect. See Steven W. Hemelt & Kevin M. Stange & Fernando Furquim & Andrew Simon & John E. Sawyer, 2021. ''Why Is Math Cheaper than English? Understanding Cost Differences in Higher Education,'' Journal of Labor Economics, vol 39(2), pages 397–435.

[284] Since the policy is not estimated to shift enrollment until AY 2026 (which includes part of FY 2025), we present enrollment and budget impacts starting in 2025. Impacts in both AY and FY 2024 are zero.

also estimated to reduce overall enrollment, as some students decide to not enroll. Table 6.1 summarize the main enrollment results for non-GE programs. Enrollment in non-GE programs is expected to increase by about 0.3 percent relative to baseline over the budget period. There is a modest enrollment shift towards programs that pass both metrics, with a particularly large (proportionate) reduction in the share of enrollment in programs that fail D/E. By the end of the analysis window, 96.5 percent of enrollment is expected to be in passing programs.

TABLE 6.1—PRIMARY ENROLLMENT ESTIMATE (NON-GE PROGRAMS)

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Total Aggregate Enrollment (millions)									
Baseline	14.119	13.974	13.839	13.710	13.588	13.472	13.364	13.265	13.170
Policy	14.119	14.001	13.885	13.766	13.646	13.530	13.418	13.311	13.209
Percent of Enrollment by Program Performance									
Pass:									
Baseline	95.6	95.6	95.6	95.6	95.7	95.7	95.7	95.8	95.8
Policy	95.6	95.7	96.0	96.2	96.3	96.4	96.4	96.5	96.5
Fail D/E:									
Baseline	1.8	1.8	1.8	1.9	1.9	1.9	1.9	2.0	2.0
Policy	1.8	1.7	1.5	1.4	1.4	1.3	1.3	1.3	1.4
Fail EP:									
Baseline	2.1	2.1	2.0	2.0	1.9	1.9	1.8	1.8	1.8
Policy	2.1	2.2	2.1	2.0	2.0	1.9	1.9	1.8	1.8
Fail Both:									
Baseline	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Policy	0.5	0.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4

Table 6.2 reports comparable estimates for GE programs. Note that for GE programs we estimate enrollment in two additional categories: Pre-Ineligible, *i.e.,* programs that would be ineligible for title IV, HEA aid the following year; and Ineligible. Enrollment in GE programs is projected to decline by 8 percent relative to baseline, with the largest marginal decline in the first year programs become ineligible. There is a large enrollment shift towards programs that pass both metrics, with a particularly large reduction in the share of enrollment in programs that fail EP. By the end of the analysis window, 95.1 percent of enrollment is expected to be in passing programs, compared to 72.2 percent in the baseline scenario.

TABLE 6.2—PRIMARY ENROLLMENT ESTIMATE (GE PROGRAMS)

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Total Aggregate Enrollment (millions)									
Baseline	2.628	2.614	2.604	2.596	2.590	2.588	2.588	2.591	2.596
Policy	2.628	2.472	2.443	2.444	2.437	2.425	2.410	2.394	2.378
Percent of Enrollment by Program Performance									
Pass:									
Baseline	76.0	75.5	75.1	74.6	74.2	73.7	73.2	72.7	72.2
Policy	76.0	85.5	91.7	93.7	94.4	94.8	94.9	95.0	95.1
Fail D/E:									
Baseline	6.8	6.6	6.5	6.4	6.3	6.1	6.0	5.9	5.7
Policy	6.8	2.3	1.1	1.2	1.2	1.2	1.1	1.1	1.1
Fail EP:									
Baseline	13.9	14.4	14.9	15.5	16.0	16.6	17.1	17.7	18.3
Policy	13.9	2.4	1.7	1.8	1.8	1.8	1.8	1.8	1.9
Fail Both:									
Baseline	3.4	3.4	3.5	3.5	3.6	3.6	3.7	3.7	3.8
Policy	3.4	0.4	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Pre-Inelig:									
Baseline	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Policy	0.0	9.3	3.2	1.5	1.2	1.2	1.2	1.2	1.2
Inelig:									
Baseline	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Policy	0.0	0.0	2.1	1.7	1.2	0.8	0.7	0.6	0.6

For non-GE programs, these shifts occur primarily across programs that have different performance in the same loan risk category, with a very modest shift from public and non-profit two-year and less programs to lower-division 4-year programs. This is shown in Table 6.3. Shifts away from the public and non-profit two-year sector within non-GE programs is partially offset from shifts into these programs from failing GE programs. Recall that in ‘‘Transfer Causes Net Enrollment Increase in Some Sectors’’ above we showed that the vast majority of community colleges would gain enrollment from the proposed regulations.

TABLE 6.3—PRIMARY ENROLLMENT ESTIMATES BY RISK GROUP (NON-GE PROGRAMS)

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Projected Total Enrollment by Loan Risk Category (millions)									
Public/NP 2-year & below:									
Baseline	2.926	2.818	2.715	2.615	2.519	2.426	2.337	2.251	2.169
Policy	2.926	2.824	2.723	2.623	2.524	2.428	2.335	2.246	2.160
4-year (lower):									
Baseline	6.163	6.093	6.026	5.960	5.896	5.833	5.771	5.712	5.654
Policy	6.163	6.108	6.054	5.996	5.937	5.878	5.819	5.760	5.701
4-year (upper):									
Baseline	2.597	2.580	2.563	2.546	2.530	2.513	2.496	2.481	2.464
Policy	2.597	2.582	2.567	2.552	2.536	2.520	2.504	2.488	2.472
Graduate:									
Baseline	2.432	2.483	2.535	2.588	2.644	2.701	2.760	2.821	2.883
Policy	2.432	2.487	2.541	2.595	2.649	2.704	2.760	2.817	2.875
Percent of Enrollment by Loan Risk Category									
Public/NP 2-year & below:									
Baseline	20.7	20.2	19.6	19.1	18.5	18.0	17.5	17.0	16.5
Policy	20.7	20.2	19.6	19.1	18.5	17.9	17.4	16.9	16.4
4-year (lower):									
Baseline	43.6	43.6	43.5	43.5	43.4	43.3	43.2	43.1	42.9
Policy	43.6	43.6	43.6	43.6	43.5	43.4	43.4	43.3	43.2
4-year (upper):									
Baseline	18.4	18.5	18.5	18.6	18.6	18.7	18.7	18.7	18.7
Policy	18.4	18.4	18.5	18.5	18.6	18.6	18.7	18.7	18.7
Graduate:									
Baseline	17.2	17.8	18.3	18.9	19.5	20.0	20.7	21.3	21.9
Policy	17.2	17.8	18.3	18.8	19.4	20.0	20.6	21.2	21.8

Table 6.4 reports a similar breakdown for GE programs. Shifts to passing programs are accompanied by a shift away from proprietary two-year and below programs and towards public and non-profit programs of similar length, along with a more modest shift towards lower-division 4-year programs.

TABLE 6.4—PRIMARY ENROLLMENT ESTIMATES BY RISK GROUP (GE PROGRAMS)

	2025	2026	2027	2028	2029	2030	2031	2032	2033	
Projected Total Enrollment by Loan Risk Category (Millions)										
Prop. 2-year & below:										
Baseline	0.710	0.734	0.759	0.785	0.813	0.842	0.872	0.904	0.938	
Policy	0.710	0.605	0.592	0.606	0.621	0.637	0.653	0.668	0.683	
Public/NP 2-year & below:										
Baseline	0.533	0.518	0.504	0.489	0.475	0.462	0.450	0.437	0.424	
Policy	0.533	0.548	0.551	0.547	0.537	0.523	0.509	0.494	0.480	
4-year (lower):										
Baseline	0.794	0.779	0.765	0.752	0.739	0.728	0.717	0.707	0.697	
Policy	0.794	0.756	0.746	0.742	0.735	0.725	0.714	0.703	0.692	
4-year (upper):										
Baseline	0.208	0.202	0.197	0.192	0.186	0.182	0.177	0.172	0.168	
Policy	0.208	0.194	0.187	0.183	0.178	0.173	0.168	0.163	0.158	
Graduate:										
Baseline	0.383	0.381	0.379	0.378	0.376		0.374	0.373	0.371	0.369
Policy	0.383		0.369	0.366	0.367	0.367	0.367	0.366	0.366	0.365
Percent of Enrollment by Loan Risk Category										
Prop. 2-year & below:										
Baseline	27.0	28.1	29.1	30.3	31.4	32.5	33.7	34.9	36.1	
Policy	27.0	24.5	24.3	24.8	25.5	26.3	27.1	27.9	28.7	
Public/NP 2-year & below:										
Baseline	20.3	19.8	19.4	18.9	18.4	17.9	17.4	16.9	16.3	
Policy	20.3	22.2	22.5	22.4	22.0	21.6	21.1	20.7	20.2	
4-year (lower):										
Baseline	30.2	29.8	29.4	29.0	28.5	28.1	27.7	27.3	26.8	
Policy	30.2	30.6	30.6	30.4	30.1	29.9	29.6	29.4	29.1	
4-year (upper):										
Baseline	7.9	7.7	7.6	7.4	7.2	7.0	6.8	6.6	6.5	
Policy	7.9	7.9	7.7	7.5	7.3	7.1	7.0	6.8	6.7	
Graduate:										
Baseline	14.6	14.6	14.6	14.5	14.5	14.5	14.4	14.3	14.2	
Policy	14.6	14.9	15.0	15.0	15.1	15.1	15.2	15.3	15.3	

As reported in Tables 6.5 and 6.6, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033.

TABLE 6.5—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE
[Millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	(80)	(157)	(217)	(157)	(149)	(150)	(197)	(210)	(221)	(1,538)
Subs	(46)	(54)	(51)	(48)	(52)	(54)	(51)	(53)	(51)	(460)
Unsub	(18)	(34)	(123)	(88)	(110)	(175)	(194)	(219)	(238)	(1,200)
Grad PLUS	87	(30)	(69)	(68)	(199)	(249)	(269)	(285)	(300)	(1,381)
Par. PLUS	38	53	88	71	77	13	15	13	14	381
GE Programs:										
Pell	(102)	(354)	(648)	(838)	(906)	(944)	(1,003)	(1,077)	(1,168)	(7,040)
Subs	(133)	(327)	(383)	(374)	(372)	(381)	(397)	(418)	(444)	(3,229)
Unsub	(229)	(531)	(631)	(595)	(579)	(593)	(610)	(634)	(665)	(5,067)
Grad PLUS	(10)	(49)	(58)	(49)	(57)	(57)	(54)	(53)	(51)	(437)
Par. PLUS	(8)	(25)	(18)	(10)	(5)	(11)	(14)	(19)	(26)	(135)
Total:										
Pell	(181)	(510)	(864)	(995)	(1,055)	(1,094)	(1,200)	(1,287)	(1,388)	(8,574)
Subs	(180)	(381)	(435)	(423)	(424)	(435)	(448)	(471)	(495)	(3,689)
Unsub	(247)	(564)	(754)	(683)	(689)	(769)	(804)	(853)	(903)	(6,267)
Grad PLUS	76	(78)	(127)	(117)	(255)	(305)	(323)	(338)	(351)	(1,818)
Par. PLUS	30	29	70	62	72	2	1	(6)	(13)	246

TABLE 6.6—ESTIMATED ANNUAL PERCENT CHANGE IN TITLE IV, HEA AID VOLUME BY FISCAL YEAR
[%]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non−GE Programs:										
Pell	−0.80	−0.78	−0.71	−0.18	−0.63	−0.63	−0.67	−0.73	−0.71	−0.65
Subs	−0.43	−0.50	−0.48	−0.46	−0.50	−0.52	−0.50	−0.52	−0.51	−0.49
Unsub	−0.08	−0.15	−0.55	−0.40	−0.49	−0.77	−0.85	−0.95	−1.03	−0.59
Grad PLUS	1.72	−0.55	−1.25	−1.19	−3.26	−3.97	−4.21	−4.37	−4.50	−2.58
Par. PLUS	0.42	0.59	0.96	0.77	0.83	0.13	0.17	0.14	0.15	0.46
GE Programs:										
Pell	−4.88	−11.87	−14.12	−13.51	−13.86	−14.23	−14.92	−15.74	−16.61	−13.31
Subs	−4.75	−10.78	−12.78	−12.12	−11.79	−12.01	−12.32	−12.77	−13.33	−11.41
Unsub	−4.74	−10.78	−12.79	−12.15	−11.86	−12.11	−12.44	−12.93	−13.51	−11.48
Grad PLUS	−1.50	−6.81	−8.01	−6.63	−7.46	−7.42	−7.14	−6.95	−6.78	−6.56
Par. PLUS	−1.11	−3.43	−2.47	−1.28	−0.63	−1.37	−1.77	−2.38	−3.19	−1.96
Total:										
Pell	−1.51	−2.73	−3.10	−2.59	−3.05	−3.15	−3.35	−3.60	−3.81	−2.97
Subs	−1.32	−2.82	−3.24	−3.17	−3.20	−3.30	−3.43	−3.63	−3.84	−3.10
Unsub	−0.95	−2.12	−2.81	−2.55	−2.55	−2.82	−2.93	−3.09	−3.25	−2.57
Grad PLUS	1.33	−1.29	−2.03	−1.80	−3.73	−4.34	−4.52	−4.64	−4.73	−3.02
Par. PLUS	0.31	0.29	0.71	0.62	0.72	0.02	0.01	−0.06	−0.13	0.28

Table 6.7 reports the annual net budget impact after accounting for estimated loan repayment. We estimate a net Federal budget impact of $12.6 billion, consisting of $8.6 billion in reduced Pell Grants and $4.1 billion for loan cohorts 2024 to 2033.

TABLE 6.7—ESTIMATED ANNUAL NET BUDGET IMPACT
[Outlays in millions]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Pell	−181	−510	−864	−995	−1,055	−1,094	−1,200	−1,287	−1,388	−8,574
Subs	−38	−99	−121	−117	−115	−115	−117	−140	−114	−975
Unsub	−36	−115	−177	−174	−169	−185	−197	−208	−216	−1,476
PLUS (Par. & Grad)	−55	−56	−62	−66	−94	−106	−106	−108	−111	−764
Consol	0	−1	−10	−33	−65	−109	−157	−207	−262	−844
Total	−310	−781	−1,234	−1,385	−1,498	−1,609	−1,777	−1,950	−2,091	−12,633

The provisions most responsible for the costs of the proposed regulations are those related to Financial Value Transparency and Gainful Employment. The Department does not anticipate significant costs related to the Ability to Benefit, Financial Responsibility, Administrative Capability, and Certification Procedures provisions. The Department's calculations of the net budget impacts represent our best estimate of the effect of the regulations on the Federal student aid programs. However, realized budget impacts will be heavily influenced by actual program performance, student response to program performance, student borrowing and repayment behavior, and changes in enrollment as a result of the regulations. For example, if students, including prospective students, react more strongly to the warnings, acknowledgement requirement, or potential ineligibility of programs than anticipated and, if many of these students leave postsecondary education, the impact on Pell Grants and loans could increase. Similarly, if institutions react to the regulations by improving performance, the assumed enrollment and aid amounts could be overstated, though this would be very beneficial to students. Finally, if students' repayment behavior is different than that assumed in the model, the realized budget impact could be larger or smaller than our estimate.

Other Provisions

The proposed regulations related to Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit have not been estimated to have a significant budget impact. This is consistent with how the Department has treated similar changes in recent regulatory packages related to Financial Responsibility and Certification Procedures. The Financial Responsibility triggers are intended to identify struggling institutions and increase the financial protection the Department receives. While this may increase recoveries from institutions for certain types of loan discharges, affect the level of closed school discharges, or result in the Department withholding title IV, HEA funds, all items that would have some budget impact, we have not estimated any savings related to those provisions. Historically, the Department has not been able to obtain much financial protection obtained from closed schools and existing triggers have not been used to a great extent. Therefore, we would wait to include any effects from the proposed revisions until indications are available in title IV, HEA loan data that they meaningfully reduce closed school discharges or significantly increasing recoveries. However, we did run some sensitivity analyses where these changes did affect these discharges, as described in Table 6.8. We only project these sensitivity analyses affecting future cohorts of loans since it would be related to financial protection obtained in the future.

TABLE 6.8—FINANCIAL RESPONSIBILITY SENSITIVITY ANALYSIS

Scenario	Cohorts 2024–2033 outlays ($ in millions)
Closed School Discharges Reduced by 5 percent	−4,060
Closed School Discharges Reduced by 25 percent	−5,516
Borrower Defense Discharges Reduced by 5 percent	−4,130
Borrower Defense Discharges Reduced by 15 percent	−4,290

7. Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the benefits, costs, and transfers associated with the provisions of these regulations.

Primary Estimates

We estimate that by shifting enrollment to higher financial-value programs, the proposed regulations would increase student's earnings, resulting in net after-tax gains to students and benefits for taxpayers in the form of additional tax revenue. Table 7.1 reports the estimated aggregate earnings gain for each cohort of completers, separately for GE and non-GE programs, and the cumulative (not discounted) earnings gain over the budget window. The proposed regulation is estimated to generate $19.4 billion of additional earnings gains over the budget window, both from GE and non-GE programs. Using the approach described in ''Methodology for Costs, Benefits, and Transfers,'' we expect $15.8 billion to benefit students and $3.6 billion to benefit Federal and State governments and taxpayers.

TABLE 7.1—ANNUAL AND CUMULATIVE EARNINGS GAIN AND DISTRIBUTION BETWEEN STUDENTS AND GOVERNMENT

[millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Single-year Earnings Gains of Each Cohort of Completers										
Non-GE	0	251	513	644	703	701	670	599	520	4,602
GE	0	378	654	780	824	818	792	756	712	5,714
Total	0	629	1,167	1,423	1,527	1,519	1,463	1,355	1,232	10,316
Cumulative Earnings Gain										
Cumulative gain	0	629	1,797	2,591	2,950	3,046	2,982	2,818	2,587	19,400
Student share	0	512	1,462	2,109	2,401	2,479	2,427	2,294	2,106	15,792
Gov't share	0	117	334	482	549	567	555	524	481	3,608

The proposed rule could also alter aggregate instructional spending, by shifting enrollment to higher-cost institutions (an increase in spending) or by reducing aggregate enrollment (a decrease in spending). Table 7.2 reports estimated annual and cumulative changes in instructional spending, overall and separately for GE and non-GE programs. The net effect is an increase in aggregate cumulative instructional spending of $2.7 billion (not discounted), though this masks differences between non-GE programs (net increase in spending) and GE programs (net decrease in spending). Spending is reduced in the first year of the policy due to the decrease in enrollment, but then increases as more students transfer to more costly programs.

TABLE 7.2—INSTRUCTIONAL SPENDING CHANGE
[Millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE	0	362	644	780	836	830	794	702	613	5,562
GE	0	−435	−358	−258	−240	−282	−352	−434	−525	−2,883
Total	0	−73	287	522	596	548	442	268	88	2,679

The proposed rule would create transfers between students, the Federal Government, and among postsecondary institutions by shifting enrollment between programs, removing title IV, HEA eligibility for GE programs that fail a GE metric multiple times, and causing some students to choose non-enrollment instead of a low value program. Table 7.3 reports the number of enrolments that transfer programs, remain enrolled at ineligible programs, or decline to enroll in postsecondary education altogether. We estimate that more than 1.6 million enrollments would transfer from low financial value programs to better programs over the decade. A more modest number would remain enrolled at a program that is no longer eligible for title IV, HEA aid.

TABLE 7.3—ESTIMATED ENROLLMENT OF TRANSFERS AND INELIGIBLE UNDER PROPOSED REGULATION

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE:										
Transfer	0	115,145	112,088	97,411	88,455	83,331	80,240	78,200	76,722	731,591
Inelig	0	0	0	0	0	0	0	0	0	0
GE:										
Transfer	0	212,919	191,246	129,756	94,840	77,576	69,140	64,862	62,537	902,876
Inelig	0	0	50,106	41,127	28,100	20,400	16,374	14,284	13,168	183,559
Total:										
Transfer	0	328,064	303,334	227,167	183,296	160,906	149,380	143,062	139,259	1,634,467
Inelig	0	0	50,106	41,127	28,100	20,400	16,374	14,284	13,168	183,559

The resulting reductions in expenditures on title IV, HEA program funds from enrollment declines and continued enrollment at non-eligible institutions are classified as transfers from affected student loan borrowers and Pell grant recipients to the Federal Government. The combined reduction in title IV, HEA expenditures was presented in the Net Budget Impacts section above. Transfers also include title IV, HEA program funds that follow students as they shift from low-performing programs to higher-performing programs, which is presented in Table 7.4.

TABLE 7.4—ESTIMATED TITLE IV, HEA AID TRANSFERRED FROM FAILING TO PASSING PROGRAMS UNDER PROPOSED REGULATION
[$2019, millions]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE	0	547	532	466	430	409	396	387	381	3,548
GE	0	1,163	1,039	700	512	417	370	347	333	4,882
Total	0	1,710	1,571	1,167	942	826	766	734	715	8,430

Transfers are neither costs nor benefits, but rather the reallocation of resources from one party to another.

Table 7.5 provides our best estimate of the changes in annual monetized benefits, costs, and transfers as a result of these proposed regulations. Our baseline estimate with a discount rate of 3 percent is that the proposed regulation would generate $1.851 billion of annualized benefits against $371 million of annualized costs and $1.209 billion of transfers to the Federal government and $836 million transfers from failing programs to passing programs. A discount rate of 7 percent results in $1.734 billion of benefits against $361 million of annualized costs and $1.138 billion of transfers to the Federal government and $823 million transfers from failing programs to passing programs. Note that the accounting statement does not include benefits that are unquantified, such as benefits for students associated with lower default and better credit and benefits for institutions from improved information about their value.

TABLE 7.5—ACCOUNTING STATEMENT FOR PRIMARY SCENARIO

	Annualized impact (millions, $2019)	
	Discount rate = 3%	Discount rate = 7%
Benefits		
Earnings gain (net of taxes) for students	1,507	1,411

TABLE 7.5—ACCOUNTING STATEMENT FOR PRIMARY SCENARIO—Continued

	Annualized impact (millions, $2019)	
	Discount rate = 3%	Discount rate = 7%
Additional Federal and State tax revenue and reductions in transfer program expenditure (not included in budget impact)	344	323
For students, lower default, better credit leading to family and business formation, more retirement savings. For institutions, increased enrollment and revenue associated with new enrollments from improved information about value	Not quantified.	
Costs		
Greater instructional spending	258	245
Additional reporting by institutions	89.0	92.3
Warning/acknowledgment by institutions and students	20.1	20.1
Implementation of reporting, website, acknowledgement by ED	3.4	4.0
Time/moving cost for transfers; Investments to improve program quality	Not quantified.	
Transfers		
Transfer of Federal Pell dollars to Federal government from enrollment reduction	821	773
Transfer of Federal loan dollars to Federal government from reduced borrowing and greater repayment	388	365
Transfer of aid dollars from non-passing programs to passing programs	836	823
Transfer of State aid dollars from failing programs for dropouts	Not quantified.	

Sensitivity Analysis

We conducted the simulations of the rule while varying several key assumptions. Specifically, we provide estimates of the change in title IV, HEA volumes using varied assumptions about student transitions, student dropout, program performance, and the earnings gains associated with enrollment shifts. We believe these to be the main sources of uncertainty in our model.

Varying Levels of Student Transition

Our primary analysis assumes rates of transfer and dropout for GE programs based on the research literature, but these quantities are uncertain. The alternative models adjust transfer and dropout rates for all transfer groups to the rates for high alternatives and few alternatives, respectively, as shown in Table 5.5. As reported in Tables 7.6 and 7.7, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033, regardless of if all students have the highest or lowest amount of transfer alternatives.

TABLE 7.6—HIGH TRANSFER SENSITIVITY ANALYSIS—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE

[Millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	(81)	(160)	(225)	(170)	(165)	(169)	(219)	(233)	(245)	(1,667)
Subs	(46)	(54)	(53)	(50)	(55)	(57)	(53)	(55)	(53)	(477)
Unsub	(32)	(68)	(168)	(137)	(159)	(224)	(242)	(266)	(284)	(1,580)
Grad PLUS	71	(71)	(122)	(126)	(258)	(306)	(325)	(340)	(354)	(1,831)
Par. PLUS	39	56	90	73	79	15	19	17	18	406
GE Programs:										
Pell	(100)	(338)	(607)	(778)	(841)	(886)	(954)	(1,035)	(1,129)	(6,668)
Subs	(131)	(313)	(356)	(348)	(350)	(363)	(382)	(404)	(431)	(3,079)
Unsub	(225)	(509)	(590)	(554)	(545)	(565)	(585)	(611)	(642)	(4,826)
Grad PLUS	(11)	(49)	(55)	(45)	(53)	(53)	(51)	(49)	(48)	(415)
Par. PLUS	(4)	(15)	(7)	0	3	(4)	(9)	(14)	(21)	(72)
Total:										
Pell	(179)	(497)	(832)	(947)	(1,005)	(1,055)	(1,171)	(1,267)	(1,373)	(8,326)
Subs	(177)	(367)	(409)	(399)	(405)	(420)	(435)	(460)	(484)	(3,555)
Unsub	(257)	(577)	(759)	(691)	(704)	(788)	(826)	(876)	(926)	(6,406)
Grad PLUS	59	(120)	(178)	(172)	(311)	(360)	(376)	(389)	(401)	(2,247)
Par. PLUS	35	41	83	73	82	11	10	3	(3)	334

TABLE 7.7—LOW TRANSFER SENSITIVITY ANALYSIS—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE

[Millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	(77)	(149)	(203)	(133)	(114)	(106)	(144)	(149)	(154)	(1,229)

TABLE 7.7—LOW TRANSFER SENSITIVITY ANALYSIS—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE—Continued

[Millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Subs	(43)	(44)	(40)	(35)	(38)	(40)	(36)	(38)	(37)	(351)
Unsub	13	50	(6)	50	43	(11)	(23)	(41)	(55)	18
Grad PLUS	121	64	64	92	(19)	(58)	(71)	(81)	(91)	21
Par. PLUS	37	53	88	73	79	15	17	14	14	391
GE Programs:										
Pell	(96)	(367)	(721)	(987)	(1,100)	(1,139)	(1,184)	(1,245)	(1,326)	(8,165)
Subs	(125)	(352)	(459)	(461)	(453)	(454)	(464)	(480)	(504)	(3,753)
Unsub	(216)	(572)	(758)	(740)	(716)	(716)	(722)	(739)	(766)	(5,946)
Grad PLUS	(10)	(55)	(73)	(66)	(73)	(71)	(68)	(65)	(64)	(546)
Par. PLUS	(10)	(39)	(46)	(40)	(33)	(37)	(38)	(41)	(47)	(331)
Total:										
Pell	(173)	(516)	(924)	(1,119)	(1,214)	(1,245)	(1,328)	(1,393)	(1,480)	(9,392)
Subs	(168)	(396)	(499)	(497)	(492)	(494)	(500)	(519)	(540)	(4,104)
Unsub	(203)	(522)	(765)	(690)	(672)	(728)	(745)	(781)	(822)	(5,928)
Grad PLUS	111	9	(9)	26	(93)	(130)	(139)	(147)	(155)	(525)
Par. PLUS	27	13	43	33	46	(22)	(20)	(27)	(34)	59

No Program Improvement

Our primary analysis assumes that both non-GE and GE programs improve performance after failing either the D/E or EP metric and that GE programs that pass both metrics still improve performance in response to the rule. We incorporate this by increasing the fail to pass program transition rate by 5 percentage points for each type of program failure after 2026 for GE and non-GE programs, by reducing the rate of repeated failure by 5 percentage points for GE and non-GE programs, and by increasing the rate of a repeated passing result by two and a half percentage points for GE programs. The alternative model will assume no program improvement in response to failing metrics.

As reported in Table 7.8, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033, regardless of if programs show improvement.

TABLE 7.8—NO PROGRAM IMPROVEMENT SENSITIVITY ANALYSIS—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE

[Millions, $2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	(80)	(157)	(214)	(147)	(124)	(110)	(139)	(135)	(131)	(1,237)
Subs	(46)	(54)	(49)	(41)	(40)	(38)	(31)	(29)	(24)	(353)
Unsub	(18)	(34)	(110)	(51)	(54)	(105)	(111)	(124)	(132)	(739)
Grad PLUS	87	(30)	(56)	(34)	(150)	(191)	(204)	(215)	(226)	(1,020)
Par. PLUS	38	53	90	77	88	28	34	36	40	483
GE Programs:										
Pell	(102)	(354)	(650)	(854)	(948)	(1,015)	(1,104)	(1,204)	(1,321)	(7,552)
Subs	(133)	(327)	(388)	(393)	(404)	(426)	(453)	(484)	(520)	(3,529)
Unsub	(229)	(531)	(639)	(627)	(639)	(677)	(714)	(758)	(807)	(5,621)
Grad PLUS	(10)	(49)	(60)	(55)	(68)	(72)	(73)	(74)	(76)	(535)
Par. PLUS	(8)	(25)	(22)	(20)	(20)	(31)	(39)	(48)	(59)	(270)
Total:										
Pell	(181)	(510)	(865)	(1,000)	(1,071)	(1,124)	(1,243)	(1,341)	(1,451)	(8,786)
Subs	(180)	(381)	(437)	(434)	(445)	(464)	(484)	(514)	(544)	(3,881)
Unsub	(247)	(564)	(749)	(678)	(694)	(782)	(825)	(881)	(939)	(6,360)
Grad PLUS	76	(78)	(116)	(89)	(218)	(263)	(277)	(290)	(301)	(1,555)
Par. PLUS	30	29	68	58	67	(4)	(4)	(12)	(19)	213

Alternative Earnings Gain

Our primary analysis assumes that the earnings change associated with shifts in enrollment is equal to the difference in average earnings between groups defined by loan risk group, program performance category, and whether the program is a GE program or not, multiplied by an adjustment factor equal to 0.75. This adjustment factor was derived from a regression model where the earnings difference between passing and failing programs conditional on credential level was shown to decline by 25 percent when a rich set of student characteristics are controlled for. The estimated earnings gain associated with the rule scales directly with the value of this adjustment factor. A value of 1.0 (all of the difference in average earnings between groups would manifest as earnings gain) would increase the total annualized earnings gain for students from $1.412 billion up to $1.883 billion (3 percent discount rate).

A value of 0.40 reduces it to $0.754 billion; a value of 0.20 reduces it to $0.377 billion. The net fiscal externality increases or decreases proportionately. Each of these two scenarios would involve more of the raw earnings difference between passing and failing programs of the same credential level being explained by factors we are not able to measure (such as student academic preparation) than those that we are able to measure (such as race, sex, parent education, family income, and Pell receipt).[285] Even at these low

[285] In unpublished analysis of approximately 600 programs (defined by 2-digit CIP by institution) at four-year public colleges in Texas as part of their published work, Andrews & Stange (2019) find that a 1 percent increase in log program earnings (unadjusted) is associated with a .72 percent

values for the adjustment factor, the estimated earnings benefits of the rule by themselves outweigh the estimated costs.

Additional Sensitivity Analysis

The Department is currently examining the sensitivity to changes in the following assumptions.

- Constant aid amounts for students that transfer. Our primary analysis assumes that students' aid volume (Pell and loans) would change as they shift enrollment between types of programs. This assumption captures the fact that students moving to less expensive programs would likely require less financial aid. The alternative model will assume that students' aid packages are unchanged when they transfer between institutions.
- Alternative enrollment growth rates. Our primary analysis projects program-level enrollment based on annual growth rates for each credential level and control from 2016 to 2022. It is possible that these recent growth patterns will not continue for the next decade. The alternative model will project baseline enrollment growth using assumed higher and lower growth rates for the sectors that have the highest failure rates of the performance metrics.

We seek public comment as to how best to craft any further assumptions of the possible budgetary effect of the Financial Value Transparency and Gainful Employment components of the proposed rule.

Financial Responsibility Triggers

We also conducted several sensitivity analyses to provide some indication of the potential effects of the Financial Responsibility triggers if they did result in meaningful increases in financial protection obtained that can offset either closed school or borrower defense discharges. We modeled these as reductions in the amount of projected discharges in these categories. This would not represent a reduction in benefits given to students, but a way of considering what the cost would be if the Department was reimbursed for a portion of the discharges. These are described above in Net Budget Impacts. We seek public comment as to how best to craft any further assumptions of the possible budgetary effect of these triggers.

8. Distributional Consequences

The proposed regulation would advance distributional equity aims because the benefits of the proposed regulation—better information, increased earnings, and more manageable debt repayment—would disproportionately be realized by students who otherwise would have low earnings. Students without access to good information about program performance tend to be more disadvantaged; improved transparency about program performance would be particularly valuable to these students. The proposed regulation improves program quality in the undergraduate certificate sector in particular, which, as documented above, disproportionately enrolls low-income students. Students already attending high-quality colleges, who tend to be more advantaged, would be relatively unaffected by the regulation. The major costs of the program involve additional paperwork and instructional spending, which are not incurred by students directly.

9. Alternatives Considered

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, financial aid administrators, accrediting agencies, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at *www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html*.

Financial Value Transparency and Gainful Employment

D/E Rate Only

The Department considered using only the D/E rates metric, consistent with the 2014 Prior Rule. Tables 9.1 and 9.2 show the share of GE and non-GE programs and enrollment that would fail under only the D/E metric compared to our preferred rule that considers both D/E and EP metrics.

TABLE 9.1—PERCENT OF GE STUDENTS AND PROGRAMS THAT FAIL UNDER D/E ONLY VS. D/E + EP

	Programs		Students	
	Fail D/E only	Fail D/E + EP	Fail D/E only	Fail D/E + EP
Public:				
UG Certificates	0.0	1.0	0.4	4.4
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	0.1	0.1	0.4	0.4
Total	0.0	0.9	0.4	4.1
Private, Nonprofit:				
UG Certificates	0.6	5.8	4.9	43.5
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	0.7	0.7	3.5	3.5
Total	0.5	2.6	4.2	28.9
Proprietary:				
UG Certificates	5.0	34.0	8.7	50.0
Associate's	10.8	14.8	33.8	38.3
Bachelor's	10.7	10.8	24.3	24.4
Post-BA Certs	0.0	0.0	0.0	0.0
Master's	10.1	10.1	17.9	17.9
Doctoral	10.0	10.0	15.1	15.1

increase in log program earnings after controlling for student race/ethnicity, limited English proficiency, economic disadvantage, and achievement test scores. Additionally controlling for students' college application and admissions behavior reduces this to 0.62. Using the correlation of institution-level average earnings and value-added in Figure 2.1 of Hoxby (2018) we estimate that an earnings gain of $10,000 is associated with a value added gain of roughly $6,000 over the entire sample, of roughly $4,000 for scores below 1200, and of roughly $2,000 for scores below 1000. These relationships imply parameter values of 0.72, 0.62, 0.60, 0.40, and 0.20, respectively. Again, institution-level correlations may not be directly comparable to program-level data.

TABLE 9.1—PERCENT OF GE STUDENTS AND PROGRAMS THAT FAIL UNDER D/E ONLY VS. D/E + EP—Continued

	Programs		Students	
	Fail D/E only	Fail D/E + EP	Fail D/E only	Fail D/E + EP
Professional	13.8	13.8	50.7	50.7
Grad Certs	4.8	7.3	37.9	38.6
Total	7.8	22.8	20.5	33.5
Foreign Private:				
UG Certificates	0.0	0.0	0.0	0.0
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	1.5	1.5	84.2	84.2
Total	0.9	0.9	79.6	79.6
Foreign For-Profit:				
Master's	0.0	0.0	0.0	0.0
Doctoral	0.0	0.0	0.0	0.0
Professional	28.6	28.6	20.3	20.3
Total	11.8	11.8	17.2	17.2

TABLE 9.2—PERCENT OF NON-GE PROGRAMS AND ENROLLMENT AT GE PROGRAMS THAT FAIL UNDER D/E ONLY VS. D/E + EP

	Programs		Students	
	Fail D/E only	Fail D/E + EP	Fail D/E only	Fail D/E + EP
Public:				
Associate's	0.2	1.7	0.5	7.8
Bachelor's	0.9	1.4	1.3	1.8
Master's	0.4	0.4	1.5	1.5
Doctoral	0.2	0.2	2.6	2.6
Professional	3.3	3.3	7.5	7.5
Total	0.5	1.2	1.0	4.6
Private, Nonprofit:				
Associate's	2.7	3.2	23.0	24.7
Bachelor's	0.7	0.9	2.9	4.3
Master's	2.4	2.4	7.7	7.8
Doctoral	2.3	2.3	19.7	19.7
Professional	17.1	17.7	34.6	34.7
Total	1.4	1.7	6.9	7.9
Foreign Private:				
Associate's	0.0	0.0	0.0	0.0
Bachelor's	0.1	0.1	1.2	1.2
Master's	0.1	0.1	1.8	1.9
Doctoral	0.0	0.0	0.0	0.0
Professional	3.4	3.4	20.7	20.7
Total	0.2	0.2	2.9	2.9

Alternative Earnings Thresholds

The Department examined the consequences of two different ways of computing the earnings threshold. For the first, we computed the earnings threshold as the annual earnings among all respondents aged 25–34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education. The second is the median annual earnings among respondents aged 25–34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education, and who worked a full year prior to being surveyed. These measures, which are included in the 2022 PPD, straddle our preferred threshold, which includes all respondents in the labor force, but excludes those that are not in the labor force.

Tables 9.3 and 9.4 reports the share of programs and enrollment that would pass GE metrics under three different earnings threshold methods, with our proposed approach in the middle column. The share of enrollment in undergraduate proprietary certificate programs that would fail ranges from 34 percent under the lowest threshold up to 66 percent under the highest threshold. The failure rate for public undergraduate certificate programs is much lower than proprietary programs under all three scenarios, ranging from 2 percent for the lowest threshold to 9 percent under the highest. The earnings threshold chosen would have a much smaller impact on failure rates for degree programs, which range from 36 percent to 46 percent of enrollment for associate's programs and essentially no impact for Bachelor's degree or higher programs.

TABLE 9.3—SHARE OF ENROLLMENT IN GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	DTE + lower EP	% Failing DTE + medium EP	DTE + higher EP	Total number of enrollees
Public:				
UG Certificates	1.7	4.4	9.1	869,600
Post-BA Certs	0.0	0.0	0.0	12,600
Grad Certs	0.4	0.4	0.4	41,900
Private, Nonprofit:				
UG Certificates	27.9	43.5	46.1	77,900
Post-BA Certs	0.0	0.0	0.0	7,900
Grad Certs	3.5	3.5	5.5	35,700
Proprietary:				
UG Certificates	31.4	50.0	64.1	549,900
Associate's	34.5	38.3	44.7	326,800
Bachelor's	24.3	24.4	24.9	675,800
Post-BA Certs	0.0	0.0	0.0	800
Master's	17.9	17.9	17.9	240,000
Doctoral	15.1	15.1	15.1	54,000
Professional	50.7	50.7	50.7	12,100
Grad Certs	38.3	38.6	38.6	10,800

Note: Enrollment counts rounded to the nearest hundred.

TABLE 9.4—SHARE OF GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	DTE + lower EP	% Failing DTE + medium EP	DTE + higher EP	Total number of programs
Public:				
UG Certificates	0.6	1.0	1.6	19,00
Post-BA Certs	0.0	0.0	0.0	900
Grad Certs	0.1	0.1	0.1	1,900
Private, Nonprofit:				
UG Certificates	3.3	5.6	6.3	1,400
Post-BA Certs	0.0	0.0	0.0	600
Grad Certs	0.6	0.6	0.7	1,400
Proprietary:				
UG Certificates	21.7	33.2	39.8	3,200
Associate's	11.1	14.1	18.1	1,700
Bachelor's	10.5	10.6	11.4	1,000
Post-BA Certs	0.0	0.0	0.0	50
Master's	10.0	10.0	10.0	500
Doctoral	9.8	9.8	9.8	100
Professional	12.5	12.5	12.5	30
Grad Certs	5.5	7.0	7.0	100

Note: Program counts rounded to the nearest 100, except where 50 or fewer.

Tables 9.5 and 9.6 illustrate this for non-GE programs. As with GE programs, the earnings threshold chosen would have almost no impact on the share of Bachelors' or higher programs that fail but would impact failure rates for associate degree programs at public institutions, where the share of enrollment in failing programs ranges from 2 percent at the lowest threshold to 23 percent at the highest. Our proposed measure would result in 8 percent of enrollment failing.

TABLE 9.5—SHARE OF ENROLLMENT IN NON-GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	DTE + lower EP	% Failing DTE + medium EP	DTE + higher EP	Total number of enrollees
Public:				
Associate's	1.6	7.8	23.2	5,496,800
Bachelor's	1.4	1.8	4.3	5,800,700
Master's	1.5	1.5	1.6	760,500
Doctoral	2.6	2.6	2.6	145,200
Professional	7.5	7.5	7.5	127,500
Private, Nonprofit:				
Associate's	23.3	24.7	27.0	266,900
Bachelor's	3.7	4.3	6.0	2,651,300
Master's	7.7	7.8	7.9	796,100
Doctoral	19.7	19.7	19.7	142,900

TABLE 9.5—SHARE OF ENROLLMENT IN NON-GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET—Continued

	DTE + lower EP	% Failing DTE + medium EP	DTE + higher EP	Total number of enrollees
Professional	34.7	34.7	34.7	130,400

Note: Enrollment counts rounded to the nearest hundred.

TABLE 9.6—SHARE OF NON-GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	DTE + lower EP	% Failing DTE + medium EP	DTE + higher EP	Total number of programs
Public:				
Associate's	0.4	1.7	3.6	27,300
Bachelor's	1.0	1.4	3.0	24,300
Master's	0.4	0.4	0.4	14,600
Doctoral	0.2	0.2	0.2	5,700
Professional	3.2	3.2	3.2	600
Private, Nonprofit:				
Associate's	2.8	3.1	4.0	2,300
Bachelor's	0.8	0.9	1.4	29,800
Master's	2.4	2.4	2.4	10,400
Doctoral	2.3	2.3	2.3	2,900
Professional	17.2	17.2	17.2	500

Note: Program counts rounded to the nearest 100.

No Reporting, Disclosure, and Acknowledgment for Non-GE Programs

The Department considered proposing to apply the reporting, disclosure, and acknowledgment requirements only to GE programs, and calculating D/E rates and the earnings premium measure only for these programs, similar to the 2014 Prior Rule. This approach, however, would fail to protect students, families, and taxpayers from investing in non-GE programs that deliver low value and poor debt and earnings outcomes. As higher education costs and student debt levels increase, students, families, institutions, and the public have a commensurately growing interest in ensuring their higher education investments are justified through positive career, debt, and earnings outcomes for graduates, regardless of the sector in which the institution operates or the credential level of the program. Furthermore, comprehensive performance information about all programs is necessary to guide students that would otherwise choose failing GE programs to better options.

Small Program Rates

While we believe the D/E rates and earnings premium measure are reasonable and useful metrics for assessing debt and earnings outcomes, we acknowledge that the minimum n-size of 30 completers would exempt small programs from these Financial Value Transparency measures. In our initial proposals during negotiated rulemaking, the Department considered calculating small program rates in such instances. These small program rates would have been calculated by combining all of an institution's small programs to produce the institution's small program D/E rates and earnings premium measure, which would be used for informational purposes only. In the case of GE programs, these small program rates would not have resulted in program eligibility consequences. Several negotiators questioned the usefulness of the small program rates because they would not provide information specific to any particular program, and because an institution's different small programs in various disciplines could lead to vastly different debt and earnings outcomes. In addition, several negotiators expressed concerns about the use of small program rates as a supplementary performance measure under proposed § 668.13(e). Upon consideration of these points, and in the interest of simplifying the proposed rule, the Department has opted to omit the small program rates.

Alternative Components of the D/E Rates Measure

The Department considered alternative ways of computing the D/E rates measure, including:

- Lower completer thresholds n-size
- Different ways of computing interest rates
- Different amortization periods

We concluded that the proposed parameters used in the D/E rates and earnings premium calculations were most consistent with best practices identified in prior analysis and research.

Discretionary Earnings Rate

The Department considered simplifying the D/E rates metric by only including a discretionary earnings rate. We believe that using only the discretionary earnings rate would be insufficient because there may be some instances in which a borrower's annual earnings would be sufficient to pass an 8 percent annual debt-to-earnings threshold, even if that borrower's discretionary earnings are insufficient to pass a 20 percent discretionary debt-to-earnings threshold. Utilizing both annual and discretionary D/E rates would provide a more complete picture of a program's true debt and earnings outcomes and would be more generous to institutions because a program that passes either the annual earnings rate or the discretionary earnings rate would pass the D/E rates metric.

Pre- and Post-Earnings Comparison

A standard practice for evaluating the effectiveness of postsecondary programs is to compare the earnings of students after program completion to earnings before program enrollment, to control for any student-specific factors that determine labor market success that should not be attributed to program performance. While the Department introduced limited analysis of pre-program earnings from students' FAFSA data into the evidence above, it is not feasible to perform such comparisons on a wide and ongoing scale in the proposed regulation. Pre-program earnings data is only available for students who have labor market experience prior to postsecondary enrollment, which excludes many students who proceed directly to postsecondary education from high school. Furthermore, earnings data from part-time work during high school is mostly uninformative for earnings potential after postsecondary education. Although some postsecondary programs enroll many students with informative pre-program earnings, many postsecondary programs would lack sufficient numbers of such students to reliably incorporate pre-program earnings from the FAFSA into the proposed regulation.

Financial Responsibility

We considered keeping the existing set of financial responsibility triggers, but ultimately decided it was important to propose to expand the options. The Department is concerned that the existing set of triggers do not properly account for all the scenarios in which there is significant financial risk at an institution. We also believe these additional triggers are necessary due to concerns about the frequency with which institutions close or can face liabilities without sufficient financial protection in place.

The Department considered proposing a mandatory trigger for borrower defense based solely upon the approval of claims. However, we decided not to propose that given that there may be circumstances in which we did not decide to seek to recoup the cost of approved claims or would not be able to do so under the relevant regulations, and in these circumstances it is not necessary to retain financial protection to ensure the institution is able to cover the cost of approved borrower defense claims.

We also considered constructing the proposed trigger related to closing a location or a program solely in terms of the share of locations or programs at an institution. However, we decided that a component that reflects student enrollment is important because if an institution only has two locations but enrolls 95 percent of its students at one of them, then closing the smaller location should not be as much of a concern.

We also considered constructing more of the proposed triggers as requiring a recalculation of the composite score as was done in the 2016 regulations. However, we are concerned that determining how to recalculate the composite score in many circumstances would be challenging and could create additional burden internally and externally to properly assess the financial situation. Moreover, composite scores by their very nature always have a built-in lag since an institution must wait for its fiscal year to end and then conduct a financial audit. The result is that recalculating composite scores that may reflect a quite old financial situation for an institution would not help further the goal of better protecting against unreimbursed discharges or unpaid liabilities. Instead, dividing triggers into situations that would automatically require financial protection versus those where the Department has discretion ensures that the Department can obtain protection more readily when severe situations necessitate it.

Administrative Capability

The Department considered additional guidance regarding the validity of a high school diploma. We are proposing that a high school diploma should not be valid if (1) it does not meet the requirements set by the State agency where the high school is located, (2) it has been deemed invalid by the Department, State agency where the high school is located, or through a court proceeding, (3) was obtained from an entity that requires little or no secondary instruction, or (4) was obtained from an entity that maintains a business relationship with the eligible institution or is not accredited. We considered providing greater discretion to the institution around how it would determine that a high school diploma is valid. However, we are concerned that the current situation, which already incorporates extensive deference, has led to the too many instances of insufficient verification of high school diplomas.

Certification Procedures

For circumstances that may lead to provisional certification, the Department initially considered proposing to make an institution provisionally certified when an institution received the same finding of noncompliance in more than one program review or audit. However, after hearing negotiators' concerns on how and when this provision would be used, we abandoned this proposed specification. We agreed with negotiators who noted that we already have the authority to place an institution on provisional status for repeat findings of noncompliance.

In addition, to address excessive program hours in GE programs, the Department considered proposing to limit title IV, HEA eligibility for GE programs to no longer than the national median of hours required for the occupation in all States that license the occupation (if at least half of States license the occupation). However, negotiators were concerned with funding being cut off before students finished their programs, and many negotiators also pointed out how harmful it would be for students to begin programs with title IV, HEA funds but not be able to finish with them. During negotiations there was also support for the Department to revert to using the ''greater'' language instead of ''lesser''. Ultimately, we are proposing the ''greater'' language, and we also dropped the proposal of establishing a limitation on the amount of title IV, HEA aid that can be provided to a GE program that is subject to State licensure requirements. We did not propose this out of concern about its complexity and the confusing situation that would arise where a borrower would potentially only receive funding for a portion of their program.

Moreover, to address transcript withholding we initially considered language for institutions at risk of closure to release holds on student transcripts over a de minimis amount of unpaid balances, and to release all holds on student transcripts in the event of a closure. However, negotiators felt that this approach was too narrow and did not go far enough to help students. Several negotiators stated that students of color are disproportionately unable to access their transcripts due to transcript withholding. In addition, one negotiator argued that if an institution was being considered at risk for closure, most students would want to transfer institutions, but unfortunately transcript holds for certain amounts would negatively impact a student's ability to transfer to another institution. As mentioned during negotiations, the Department's authority to prohibit institutions from withholding transcripts is limited to instances where the institution's reason for withholding the transcript involves the title IV, HEA functions. However, if an institution is provisionally certified, we may apply other conditions that are necessary or appropriate to the institution, including, but not limited to releasing holds on student transcripts. Accordingly, we are proposing to expand the provisional conditions related to transcript withholding to increase students' access to their educational records at institutions with risk of closure or institutions that are not financially responsible or administratively capable.

Ability To Benefit

The Department considered not regulating in this area. We were concerned, however, that the lack of an update to ATB regulations since the mid-1990s could create confusion. Moreover, the Department had stated in DCL GEN 16–09 that we would not develop a career pathway program approval process but would instead review the eligibility of these programs through program reviews and audits. This statement in effect allowed institutions to use their best-faith determinations to initiate eligible career pathway programs but provided no framework for how the Department would evaluate these programs from through a program review. This led to a vacuum in guidance for institutions and authority to intervene for the Department. We also think this ultimately chilled the usage of a State process, the first application we received was in 2019 and as of February 2023 only six States have applied for approval. The Department also noted that there were technical updates to the regulations necessary to codify the changes to student eligibility made by Public Law 113–235 in 2014. Therefore, we decided the added clarity from these proposed regulations would result in greater usage of the State process for ATB, while still preserving protections for students and taxpayers.

The Department also considered using completion rates as an outcome metric in our approval of a State process, as opposed to the success rate calculation that is required under the current regulation and amended in this proposed regulation. We were concerned with the complexity of developing a framework for a completion rate in regulation for eligible career pathway programs. These programs can be less than two-years, two-years, or four-years long. We did not want to create a framework in regulation that did not account for the nuances between programs. We believe we have clarified the calculation with the proposed amendments to the success rate calculation. We also propose to lower the success rate threshold from 95 percent to 85 percent and to give the Secretary the ability to lower it to 75 percent for up to two years if more than 50 percent of the participating institutions in the State cannot achieve the 85 percent success rate. This would provide participating institutions and the Department reasonable accommodations for unintended or unforeseen circumstances that may arise.

In drafting proposed § 668.157, we initially did not require postsecondary institutions to document that students would receive adult education and literacy activities as described in 34 CFR 463.30 and workforce preparation activities as described in 34 CFR 463.34, simultaneously. A negotiator recommended that the Department utilize existing definitions in the Code of Federal regulations for concepts like adult education and literacy services and workforce preparation activities, and the Department agreed to propose to cross reference them instead of creating different standards in 34 CFR 668.157. We also did not initially consider proposing to require that, in order to demonstrate that the program aligns with the skill needs of industries in the State or regional labor market, the institution would have to submit (1) Government reports (2) Surveys, interviews, meetings, or other information, and (3) Documentation that demonstrates direct engagement with industry. We were persuaded by a committee member that the documentation the Department initially considered proposing was lacking and could allow programs that did not comply with the definition of an eligible career pathway program to be approved. Our goal is to ensure students have ability to benefit and we believe these proposed reasonable documentation standards would achieve that.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 668.2.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

10. Regulatory Flexibility Act Analysis

This section considers the effects that the proposed regulations may have on small entities in the Educational Sector as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. *et seq.,* Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a ''significant impact on a substantial number of small entities.'' As we describe below, the Department anticipates that the proposed regulatory action would have a significant economic impact on a substantial number of small entities. We therefore present this Initial Regulatory Flexibility Analysis. Our analysis focuses on the financial value transparency and gainful employment (GE) components of the proposed regulation, as those would have the most economically significant implications for small entities.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is proposing new regulations to address concerns about the rising cost of postsecondary education and training and increased student borrowing by establishing an accountability and transparency framework to encourage eligible postsecondary programs to produce acceptable debt and earnings outcomes, apprise current and prospective students of those outcomes, and provide better information about program price. Proposed regulations for gainful employment would establish eligibility and certification requirements tied to the debt-to-earnings and median earnings (relative to high school graduates) of program graduates. These regulations address ongoing concerns about educational programs that are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings or earnings lower than that of a typical high school graduate. These programs often lead to default or provide no earnings benefit beyond that provided by a high school education, thus failing to fulfill their intended goal of preparing students for gainful employment.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Through the proposed financial value transparency regulations, the Department aims to ensure that prospective students, families, and taxpayers can receive accurate information about program costs, typical borrowing, available financial aid, and realistic earnings potential to evaluate a program and compare it to similar programs offered at other institutions before investing time and resources in a postsecondary program. The GE regulations further aim to ensure that students receiving title IV, HEA aid only enroll in GE programs if such programs prepare students for gainful employment.

The Department's authority to pursue financial value transparency in GE programs and eligible non-GE programs and accountability in GE programs is derived primarily from three categories of statutory enactments: first, the Secretary's generally applicable rulemaking authority in 20 U.S.C. 1221e–3 (section 410 of the General Education Provisions Act) and 20 U.S.C. 3474 (section 414 of the Department of Education Organization Act), along with 20 U.S.C. 1231a, which applies in part to title IV, HEA; second, authorizations and directives within sections 131 and 132 of title IV of the HEA, regarding the collection and dissemination of potentially useful information about higher education programs, as well as section 498 of the HEA, regarding eligibility and certification standards for institutions that participate in title IV; and third, the further provisions within title IV of the HEA, such as sections 101 and 481, which address the limits and responsibilities of gainful employment programs. The specific statutory sources of this authority are detailed in the Authority for This Regulatory Action section of the Preamble above.

Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Regulations Would Apply

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report data on revenue that is directly comparable across institutions. As a result, for purposes of this NPRM, the Department proposes to continue defining ''small entities'' by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. The enrollment standard for a small two-year institution is less than 500 full-time-equivalent (FTE) students and for a small four-year institution, less than 1,000 FTE students.[286] We invite public comment on whether our Regulatory Flexibility Analysis would more accurately reflect the burden on small entities if we instead used the revenue standards set out in 13 CFR part 121, sector 61—Educational Services.

TABLE 10.1—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

	Small	Total	Percent
Proprietary	1,973	2,331	85
2-year	1,734	1,990	87
4-year	239	341	70
Private not-for-profit	983	1,831	54
2-year	185	203	91
4-year	798	1,628	49
Public	380	1,924	20
2-year	317	1,145	28
4-year	63	779	8
Total	3,336	6,086	55

Table 10.1 summarizes the number of institutions affected by these proposed regulations. As seen in Table 10.2, the average total revenue at small institutions ranges from $2.6 million for proprietary institutions to $16.6 million at private institutions.

TABLE 10.2—AVERAGE AND TOTAL REVENUES AT SMALL INSTITUTIONS

	Average	Total
Proprietary	2,593,382	5,116,742,179
2-year	1,782,969	3,091,667,694
4-year	8,473,115	2,025,074,485
Private not-for-profit	16,608,849	16,326,498,534
2-year	3,101,962	573,862,938
4-year	19,740,145	15,752,635,596
Public	8,644,387	3,284,866,903

[286] The Department uses an enrollment-based definition since this applies the same metric to all types of institutions, allowing consistent comparison across all types. For a further explanation of why the Department proposes this alternative size standard, please see Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program (Borrower Defense) proposed rule published July 31, 2018 (83 FR 37242).

TABLE 10.2—AVERAGE AND TOTAL REVENUES AT SMALL INSTITUTIONS—Continued

	Average	Total
2-year	4,153,842	1,316,767,990
4-year	31,239,665	1,968,098,913
Total	7,412,502	24,728,107,616

These proposed regulations require additional reporting and compliance by all title IV postsecondary institutions, including all small entities, and thus would have a significant impact on a substantial number of small entities. Furthermore, GE programs at small institutions could be at risk of losing the ability to distribute title IV, HEA funds under the proposed regulations if they fail either the debt-to-earnings (D/E) or Earnings Premium (EP) metrics, as described in the Financial Value and Transparency and GE sections of the proposed regulation. Non-GE programs at small institutions that fail the D/E metric would be required to have students acknowledge having seen this information prior to aid disbursement.

Thus, all (100 percent) of small entities will be impacted by the reporting and compliance aspects of the rule, which we quantify below. As we describe in more detail below, the Department estimates that 1.2 percent of non-GE programs at small institutions would fail the D/E metric, thus triggering the acknowledgement requirement. The Department also estimates that 15.9 percent of GE programs at small institutions would fail either the D/E or EP metric, thus being at risk of losing title IV, HEA eligibility. GE programs represent 45 percent of enrollment at small institutions.

The Department's analysis shows programs at small institutions are much more likely to have insufficient sample size to compute and report D/E and EP metrics, though the rate of failing to pass both metrics is higher for programs at such institutions.[287]

As noted in the net budget estimate section, we do not anticipate that the proposed Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit components of the regulation would have any significant budgetary impact, this includes on a substantial number of small entities. We have, however, run a sensitivity analysis of what an effect of the Financial Responsibility provisions could be on offsetting the transfers of certain loan discharges from the Department to borrowers by obtaining additional funds from institutions. We conclude that these provisions could increase recoveries via closed school discharges or borrower defense of $4 to $5 million from all types of institutions, not just small institutions. Since these amounts scale with the number of students, we anticipate the impact to be much smaller at small entities.

Table 10.3 and 10.4 show the number and percentage of non-GE enrollees and non-GE programs at small institutions in each status relative to the performance standard. The share of non-GE programs that have sufficient data and fail the D/E metric is higher for programs at small institutions (1.6 percent) than it is for all institutions (0.6 percent, Table 3.5). Failing the D/E metric for non-GE programs initiates a requirement that the institution must have title IV, HEA students acknowledge having seen the informational disclosures before Federal student aid is disbursed. The share of title IV, HEA enrollment in such programs is also higher at small institutions (9.3 percent for small institutions vs. 1.9 percent for all institutions, Table 3.5).

TABLE 10.3—NUMBER OF ENROLLEES IN NON-GE PROGRAMS AT SMALL INSTITUTIONS BY RESULT, BY CONTROL AND CREDENTIAL LEVEL

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
Associate's	23,000	85.0	3,500	13.0	0	0.0	0	0.0	500	2.0
Bachelor's	8,900	75.1	3,000	24.9	0	0.0	0	0.0	0	0.0
Master's	500	32.2	1,100	67.8	0	0.0	0	0.0	0	0.0
Doctoral	300	36.3	600	63.7	0	0.0	0	0.0	0	0.0
Professional	2,100	45.3	1,400	29.8	1,200	24.9	0	0.0	0	0.0
Total	35,000	75.6	9,500	20.7	1,200	2.5	0	0.0	500	1.2
Private, Nonprofit:										
Associate's	27,000	58.6	13,500	29.3	2,500	5.5	1,400	3.1	1,600	3.4
Bachelor's	160,200	73.9	43,300	19.9	4,600	2.1	5,100	2.4	3,700	1.7
Master's	28,100	58.1	15,400	31.9	3,700	7.6	1,100	2.3	50	0.1
Doctoral	6,300	37.9	3,600	21.3	6,800	40.4	70	0.4	0	0.0
Professional	8,000	22.4	8,300	23.1	19,400	53.8	0	0.0	200	0.7
Total	229,800	63.1	84,100	23.1	37,000	10.2	7,700	2.1	5,600	1.5
Total:										
Associate's	50,000	68.4	17,000	23.3	2,500	3.4	1,400	2.0	2,100	2.9
Bachelor's	169,100	73.9	46,200	20.2	4,600	2.0	5,100	2.2	3,700	1.6
Master's	28,600	57.3	16,500	33.0	3,700	7.4	1,100	2.2	50	0.1
Doctoral	6,700	37.8	4,200	23.5	6,800	38.3	70	0.4	0	0.0

[287] The minimum number of program completers in a two-year cohort that is required in order for the Department to compute the D/E and EP performance metrics is referred to as the "n-size." An n-size of 30 is used in the proposed rule; GE and non-GE programs with fewer than 30 completers across two years would not have performance metrics computed.

TABLE 10.3—NUMBER OF ENROLLEES IN NON-GE PROGRAMS AT SMALL INSTITUTIONS BY RESULT, BY CONTROL AND CREDENTIAL LEVEL—Continued

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Professional	10,200	25.0	9,700	23.9	20,500	50.5	0	0.0	200	0.6
Total	264,600	64.5	93,600	22.8	38,100	9.3	7,700	1.9	6,100	1.5

Note: Enrollment counts rounded to the nearest 100.

TABLE 10.4—NUMBER OF NON-GE PROGRAMS AT SMALL INSTITUTIONS BY RESULT, BY CONTROL AND CREDENTIAL LEVEL

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
Associate's	700	97.3	20	2.3	0	0.0	0	0.0	3	0.4
Bachelor's	200	95.4	9	4.6	0	0.0	0	0.0	0	0.0
Master's	30	81.1	7	18.9	0	0.0	0	0.0	0	0.0
Doctoral	20	89.5	2	10.5	0	0.0	0	0.0	0	0.0
Professional	10	60.0	4	26.7	2	13.3	0	0.0	0	0.0
Total	100	95.6	40	3.9	2	0.2	0	0.0	3	0.3
Private, Nonprofit:										
Associate's	700	91.6	50	6.7	3	0.4	5	0.6	6	0.7
Bachelor's	4,200	94.7	200	4.1	20	0.4	19	0.4	20	0.4
Master's	900	87.2	100	9.5	30	2.6	6	0.6	2	0.2
Doctoral	200	87.1	10	4.9	20	7.6	1	0.4	0	0.0
Professional	80	65.6	10	10.9	30	21.1	0	0.0	3	2.3
Total	6,100	92.3	400	5.4	90	1.4	31	0.5	30	0.4
Total:										
Associate's	1,500	94.3	70	4.6	3	0.2	5	0.3	9	0.6
Bachelor's	4,400	94.7	200	4.1	20	0.4	19	0.4	20	0.3
Master's	1,000	86.9	100	9.8	30	2.5	6	0.6	2	0.2
Doctoral	200	87.2	10	5.3	20	7.0	1	0.4	0	0.0
Professional	100	65.0	20	12.6	30	20.3	0	0.0	3	2.1
Total	7,100	92.7	400	5.2	100	1.2	31	0.4	30	0.4

Note: Program counts rounded to nearest hundred when above hundred, nearest 10 when below 100, and unrounded when below 10.

Tables 10.5 and 10.6 report similar tabulations for GE programs at small institutions. GE programs include non-degree certificate programs at all institutions and all degree programs at proprietary institutions. GE programs at small institutions are more likely to have a failing D/E or EP metrics (15.9 percent of all GE programs at small institutions, compared to 5.5 percent for all institutions in Table 3.9) and have a greater share of enrollment in such programs (45.3 percent vs. 24.0 percent for all institutions in Table 3.8). GE programs that fail the same performance metric in two out of three consecutive years will become ineligible to administer Federal title IV, HEA student aid.

TABLE 10.5—NUMBER OF ENROLLEES IN GE PROGRAMS AT SMALL INSTITUTIONS BY RESULT, BY CONTROL AND CREDENTIAL LEVEL

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
UG Cert	26,000	71.8	9,300	25.7	0	0.0	0	0.0	900	2.6
Post-BA Cert	<30	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Cert	100	77.2	40	22.8	0	0.0	0	0.0	0	0.0
Total	26,100	71.8	9,300	25.6	0	0.0	0	0.0	900	2.6
Private, Nonprofit:										
UG Cert	9,100	45.6	5,100	25.8	0	0.0	100	0.6	5,500	27.9
Post-BA Cert.	1,400	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Cert	1,400	70.3	0	0.0	600	29.7	0	0.0	0	0.0
Total	11,900	51.0	5,100	22.0	600	2.6	100	0.5	5,500	23.8
Proprietary:										

TABLE 10.5—NUMBER OF ENROLLEES IN GE PROGRAMS AT SMALL INSTITUTIONS BY RESULT, BY CONTROL AND CREDENTIAL LEVEL—Continued

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
UG Cert	44,700	21.6	36,500	17.6	80	0.0	25,200	12.1	101,000	48.7
Associate's	18,800	40.9	12,600	27.4	7,100	15.5	5,200	11.3	2,300	5.0
Bachelor's	8,800	65.1	3,400	25.1	1,100	8.2	200	1.7	0	0.0
Post-BA Cert	50	55.8	40	44.2	0	0.0	0	0.0	0	0.0
Master's	2,900	74.2	200	3.9	300	8.2	600	13.6	0	0.0
Doctoral	1,700	75.4	300	11.3	300	13.3	0	0.0	0	0.0
Professional	1,000	37.7	100	3.7	1,600	58.6	0	0.0	0	0.0
Grad Cert	300	77.8	0	0.0	0	0.0	0	0.0	70	22.2
Total	78,200	28.3	53,000	19.2	10,500	3.8	31,100	11.3	103,400	37.4
Total:										
UG Cert	79,800	30.3	50,900	19.3	80	0.0	25,300	9.6	107,500	40.8
Associate's	18,800	40.9	12,600	27.4	7,100	15.5	5,200	11.3	2,300	5.0
Bachelor's	8,800	65.1	3,400	25.1	1,100	8.2	200	1.7	0	0.0
Post-BA Certs	1,400	97.4	40	2.6	0	0.0	0	0.0	0	0.0
Master's	2,900	74.2	200	3.9	300	8.2	500	13.6	0	0.0
Doctoral	1,700	75.4	300	11.3	300	13.3	0	0.0	0	0.0
Professional	1,000	37.7	100	3.7	1,600	58.6	0	0.0	0	0.0
Grad Certs	1,800	71.7	30	1.4	600	24.0	0	0.0	70	2.9
Total	116,300	34.6	67,400	20.1	11,100	3.3	31,300	9.3	109,800	32.7

Note: Enrollment counts rounded to the nearest 100, except where counts are less than 100, where they are rounded to nearest 10 (and suppressed when under 30).

TABLE 10.6—NUMBER OF GE PROGRAMS AT SMALL INSTITUTIONS BY RESULT, BY CONTROL AND CREDENTIAL LEVEL

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public UG:										
Certificates	1,700	92.4	100	6.3	0	0.0	0	0.0	20	1.3
Post-BA Certs	10	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	10	91.7	1	8.3	0	0.0	0	0.0	0	0.0
Total	1,700	92.5	100	6.3	0	0.0	0	0.0	20	1.2
Private, Nonprofit UG:										
Certificates	300	83.9	40	9.0	0	0.0	1	0.2	30	6.8
Post-BA Certs	100	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	100	98.1	0	0.0	2	1.9	0	0.0	0	0.0
Total	600	89.6	40	5.7	2	0.3	1	0.2	30	4.3
Proprietary UG:										
Certificates	1,000	52.3	200	10.6	1	0.1	100	6.4	600	30.6
Associate's	500	79.6	70	9.6	36	5.3	20	2.9	20	2.5
Bachelor's	200	87.9	20	7.1	9	4.0	2	0.9	0	0.0
Post-BA Certs	10	91.7	1	8.3	0	0.0	0	0.0	0	0.0
Master's	90	91.8	2	2.0	2	2.0	4	4.1	0	0.0
Doctoral	30	94.3	1	2.9	1	2.9	0	0.0	0	0.0
Professional	20	80.0	1	5.0	3	15.0	0	0.0	0	0.0
Grad Certs	20	84.2	0	0.0	0	0.0	0	0.0	3	15.8
Total	1,900	63.3	300	9.7	52	1.7	200	5.0	620	20.4
Total UG										
Certificates	3,100	72.8	400	8.6	1	0.0	100	3.0	650	15.5
Associate's	500	79.6	70	9.6	36	5.3	20	2.9	20	2.5
Bachelor's	200	87.9	20	7.1	9	4.0	2	0.9	0	0.0
Post-BA Certs	200	99.4	1	0.6	0	0.0	0	0.0	0	0.0
Master's	100	91.8	2	2.0	2	2.0	4	4.1	0	0.0
Doctoral	30	94.3	1	2.9	1	2.9	0	0.0	0	0.0
Professional	20	80.0	1	5.0	3	15.0	0	0.0	0	0.0
Grad Certs	100	95.6	1	0.7	2	1.5	0	0.0	3	2.2
Total	4,200	76.1	500	8.1	54	1.0	200	2.8	700	12.1

Note: Program counts rounded to nearest hundred when above hundred, nearest 10 when below 100, and unrounded when below 10.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Regulations, Including an Estimate of the Classes of Small Entities That Would Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule involves four types of reporting and compliance requirements for institutions, including small entities. First, under proposed § 668.43, institutions would be required to provide additional programmatic information to the Department and make this and additional information assembled by the Department available to current and prospective students by providing a link to a Department-administered disclosure website. Second, under proposed § 668.407, the Department would require acknowledgments from current and prospective students prior to the disbursement of title IV, HEA funds if an eligible non-GE program leads to high debt outcomes based on its D/E rates. Third, under proposed § 668.408, institutions would be required to provide new annual reporting about programs, current students, and students that complete or withdraw during each award year. As described in the Preamble of this proposed rule, reporting includes student-level information on enrollment, cost of attendance, tuition and fees, allowances for books and supplies, allowances for housing, institutional and other grants, and private loans disbursed. Finally, under proposed § 668.605, institutions with GE programs that fail at least one of the metrics would be required to provide warnings to current and prospective students about the risk of losing title IV, HEA eligibility and would require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

Initial estimates of the reporting and compliance burden for these four items for small entities are provided in Table 10.7, though these are subject to revision as the content of the required reporting is refined.[288]

TABLE 10.7—INITIAL AND SUBSEQUENT REPORTING AND COMPLIANCE BURDEN FOR SMALL ENTITIES

§ 668.43	Amend § 668.43 to establish a website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.	6,700,807.
§ 668.407	Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.	25,522.
§ 668.408	Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the reporting timeframe.	31,121,875 initial, 12,689,497 subsequent years.
§ 668.605	Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.	415,809.

As described in the Preamble, much of the necessary information for GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. Furthermore, 88 percent of public and 47 percent of private non-profit institutions operated at least one GE program and thus have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the Federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. Finally, the Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past for the first year of implementation, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

The Department recognizes that institutions may have different processes for record-keeping and administering financial aid, so the burden of the GE and financial transparency reporting could vary by institution. As noted previously, a high percentage of institutions have already reported data related to the 2014 Prior Rule or similar variables for other purposes. Many institutions may have systems that can be queried or existing reports that can be adapted to meet these reporting requirements. On the other hand, some institutions may still have data entry processes that are very manual in nature and generating the information for their programs could involve many more hours and resources. Small entities may be less likely to have invested in systems and processes that allow easy data reporting because it is not needed for their operations. Institutions may fall in between these poles and be able to automate the reporting of some variables but need more effort for others.

We believe that, while the reporting relates to program or student-level information, the reporting process is likely to be handled at the institutional level. There would be a cost to establish the query or report and validate it upfront, but then the marginal increase in costs to process additional programs or students should not be too significant. The reporting process will involve staff members or contractors with different skills and levels of responsibility. We have estimated this using Bureau of Labor statistics median hourly wage rates for postsecondary administrators of $46.59.[289] Table 10.8 presents the Department's estimates of the hours associated with the reporting requirements.

[288] For subparts 68.43, 668.407, and 668.605, these estimates were obtained by proportioning the total PRA burden falling on institutions by the share of institutions that are small entities, as reported in Table 10.1 (55 percent).

[289] Available at *https://www.bls.gov/oes/current/oes119033.htm*.

TABLE 10.8—ESTIMATED HOURS FOR REPORTING REQUIREMENTS

Process	Hours	Hours basis
Review systems and existing reports for adaptability for this reporting	10	Per institution.
Develop reporting query/result template:		
Program-level reporting	15	Per institution.
Student-level reporting	30	Per institution.
Run test reports:		
Program-level reporting	0.25	Per institution.
Student-level reporting	0.5	Per institution.
Review/validate test report results:		
Program-level reporting	10	Per institution.
Student-level reporting	20	Per institution.
Run reports:		
Program-level reporting	0.25	Per program.
Student-level reporting	0.5	Per program.
Review/validate report results:		
Program-level reporting	2	Per program.
Student-level reporting	5	Per program.
Certify and submit reporting	10	Per institution.

The ability to set up reports or processes that can be rerun in future years, along with the fact that the first reporting cycle includes information from several prior years, means that the expected burden should decrease significantly after the first reporting cycle. We estimate that the hours associated with reviewing systems, developing or updating queries, and reviewing and validating the test queries or reports will be reduced by 35 percent after the first year. The queries or reports would have to be run and validated to make sure no system changes have affected them and the institution will need to confirm there are no program changes in CIP code, credential level, preparation for licensure, accreditation, or other items, but we expect that would be less burdensome than initially establishing the reporting. Table 10.9 presents estimates of reporting burden for small entities for the initial year and subsequent years under proposed § 668.408.

TABLE 10.9.1—ESTIMATED REPORTING BURDEN FOR SMALL ENTITIES FOR THE INITIAL REPORTING CYCLE

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	139	393	25,492	1,187,684
Proprietary 2-year	1,227	2,635	199,170	9,279,342
Public 2-year	286	2,058	91,183	4,248,193
Private 4-year	655	6,876	275,872	12,852,888
Proprietary 4-year	146	1,098	48,018	2,237,135
Public 4-year	52	751	28,260	1,316,633
Total	2,505	13,811	667,995	31,121,875

TABLE 10.9.2—ESTIMATED REPORTING BURDEN FOR SMALL ENTITIES FOR SUBSEQUENT REPORTING CYCLE

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	139	393	12,220	569,318
Proprietary 2-year	1,227	2,635	101,403	4,724,377
Public 2-year	286	2,058	34,826	1,622,520
Private 4-year	655	6,876	96,519	4,496,820
Proprietary 4-year	146	1,098	18,146	845,399
Public 4-year	52	751	9,252	431,062
Total	2,505	13,811	272,365	12,689,497

The Department welcomes comments from small entities on the processes and burden required to meet the reporting requirements under the proposed regulations.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations, institutions are already required to disclose data and provide reporting in a number of areas related to the regulations. The regulations propose using data that is already reported by institutions or collected administratively by the Department wherever possible.

Alternatives Considered

As described in section 9 of the Regulatory Impact Analysis above, ''Alternatives Considered'', we evaluated several alternative provisions and approaches including using D/E rates only, alternative earnings thresholds, no reporting or acknowledgement requirements for non-GE programs, and several alternative ways of computing the performance metrics (smaller n-sizes and different interest rates or amortization periods). Most relevant to small entities was the alternative of using a lower n-size, which would result in larger effects on programs at small entities, both in terms of risk for loss of eligibility for GE programs and greater burden for providing warnings and/or disclosure acknowledgement. The alternative of not requiring reporting or acknowledgements in the case of failing metrics for non-GE programs would result in lower reporting burden for small institutions but was deemed to be insufficient to achieve the goal of creating greater transparency around program performance.

11. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Sections 600.21, 668.14, 668.15, 668.16, 668.23, 668.43, 668.156, 668.157, 668.171, 668.407, 668.408, and 668.605 of this proposed rule contain information collections requirements.

Under the PRA, the Department has or will at the required time submit a copy of these sections and Information Collection requests to OMB for its review. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 600.21—Updating application information.

Requirements: The proposed change to §§ 600.21((1)(11)(v) and (vi), would require an institution with GE programs to update any changes in certification of those program(s).

Burden Calculations: The proposed regulatory change would require an update to the current institutional application form, 1845–0012. The form update would be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes would be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

Section 668.14—Program participation agreement.

Requirements: The NPRM proposes to redesignate current § 668.14(e) as § 668.14(h). The Department also proposes to add a new paragraph (e) that outlines a non-exhaustive list of conditions that we may opt to apply to provisionally certified institutions. The NPRM proposes that institutions at risk of closure must submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. The NPRM proposes that institutions at risk of closure must submit an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented, to the Department.

The NPRM also proposes that an institution at risk of closure that is teaching out, closing, or that is not financially responsible or administratively capable, would release holds on student transcripts. Other conditions for institutions that are provisionally certified and may be applied by the Secretary are also proposed.

Burden Calculations: The proposed NPRM regulatory language in § 668.14 would add burden to all institutions, domestic and foreign. The proposed change in § 668.14(e) would potentially require provisionally certified institutions at risk of closure to submit to the Department acceptable teach-out plans, and acceptable record retention plans. For provisionally certified institutions at risk of closure, are teaching out or closing, or are not financially responsible or administratively capable, the proposed change requires the release of holds on student transcripts.

We believe that this type of update would require 10 hours for each institution to provide the appropriate material, or required action based on the proposed regulations. As of January 2023, there were a total of 863 domestic and foreign institutions that were provisionally certified. We estimate that of that figure 5% or 43 provisionally certified institutions may be at risk of closure. We estimate that it would take private non-profit institutions 250 hours ($25 \times 10 = 250$) to complete the submission of information or required action. We estimate that it would take proprietary institutions 130 hours ($13 \times 10 = 130$) to complete the submission of information or required action. We estimate that it would take public institutions 50 hours ($5 \times 10 = 50$) to complete the submission of information or required action.

The estimated § 668.14(e) total burden is 430 hours with a total rounded estimated cost for all institutions of \$20,035 ($430 \times \$46.59 = \$20,033.70$).

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	25	25	250	$11,648
Proprietary	13	13	130	6,057
Public	5	5	50	2,330
Total	43	43	430	20,035

Section 668.15—Factors of financial responsibility.

Requirements: This section is being removed and reserved.

Burden Calculations: With the removal of regulatory language in Section 668.15 the Department would remove the associated burden of 2,448 hours under OMB Control Number 1845–0022.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	−866	−866	−816	−$38,017
Proprietary	−866	−866	−816	−$38,017
Public	−866	−866	−816	−$38,017
Total	−2,598	−2,598	−2,448	−$114,051

Section 668.16—Standards of administrative capability.

Requirements: The Department proposes to amend § 668.16 to clarify the characteristics of institutions that are administratively capable. The NPRM proposes amending § 668.16(h) which would require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available to enrolled students. This would include clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts. Institutions would also have to provide students with information about the institution's cost of attendance, the source and type of aid offered, whether it must be earned or repaid, the net price, and deadlines for accepting, declining, or adjusting award amounts.

The NPRM also proposes amending § 668.16(p) which would strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. The Department proposes to update the references to high school completion in the current regulation to high school diploma which would set specific requirements to the existing procedural requirement for adequate evaluation of the validity of a student's high school diploma.

Burden Calculations: The proposed NPRM regulatory language in § 668.16 would add burden to all institutions, domestic and foreign. The proposed changes in § 668.16(h) would require an update to the financial aid communications provided to students.

We believe that this update would require 8 hours for each institution to review their current communications and make the appropriate updates to the material based on the proposed regulations. We estimate that it would take private non-profit institutions 15,304 hours (1,913 × 8 = 15,304) to complete the required review and update. We estimate that it would take proprietary institutions 12,302 hours (1,504 × 8 = 12,302) to complete the required review and update. We estimate that it would take public institutions 14,504 hours (1,813 × 8 = 14,504) to complete the required review and update. The estimated § 668.16(h) total burden is 41,840 hours with a total rounded estimated cost for all institutions of $1,949,326 (41,840 × $46.59 = 1,949,325.60).

The proposed changes in § 668.16(p) would add requirements for adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

We believe that this update would require 3 hours for each institution to review their current policy and procedures for evaluating high school diplomas and make the appropriate updates to the material based on the proposed regulations. We estimate that it would take private non-profit institutions 5,739 hours (1,913 × 3 = 5,739) to complete the required review and update. We estimate that it would take proprietary institutions 4,512 hours (1,504 × 3 = 4,512) to complete the required review and update. We estimate that it would take public institutions 5,439 hours (1,813 × 3 = 5,439) to complete the required review and update. The estimated § 668.16(p) total burden is 15,690 hours with a total rounded estimated cost for all institutions of $730,997 (15,690 × $46.59 = $730,997.10).

The total estimated increase in burden to OMB Control Number 1845–0022 for § 668.16 is 57,530 hours with a total rounded estimated cost of $2,680,323.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	1,913	3,826	21,043	$980,394
Proprietary	1,504	3,008	16,544	770,785
Public	1,813	3,626	19,943	929,144
Total	5,230	10,460	57,530	2,680,323

Section 668.23—Compliance audits and audited financial statements.

Requirements: The Department proposes to add § 668.23(d)(2)(ii) that would require that an institution, domestic or foreign, that is owned by a foreign entity holding at least a 50 percent voting or equity interest to provide documentation of its status under the law of the jurisdiction under which it is organized, as well as basic organizational documents. The submission of such documentation would better equip the Department to obtain appropriate and necessary documentation from an institution which has a foreign owner or owners with 50 percent or greater voting or equity interest which would provide a clearer picture of the institution's legal status to the Department, as well as who exercises direct or indirect ownership over the institution.

The Department also proposes adding new § 668.23(d)(5) that would require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

Burden Calculations: The proposed NPRM regulatory language in § 668.23(d)(2)(ii) would add burden to foreign institutions and certain domestic institutions to submit documentation, translated into English as needed.

We believe this reporting activity would require an estimated 40 hours of work for affected institutions to complete. We estimate that it would take private non-profit institutions 13,520 hours (338 × 40 = 13,520) to complete the required documentation gathering and translation as needed. We estimate that it would take proprietary institutions 920 hours (23 × 40 = 920) to complete the required footnote activity. The estimated § 668.23(d)(2)(ii) total burden is 14,440 hours with a total rounded estimated cost for all institutions of $672,760 (14,440 × $46.59 = $672,759.60).

The proposed NPRM regulatory language in § 668.23(d)(5) would add burden to all institutions, domestic and foreign. The proposed changes in § 668.23(d)(5) would require a footnote to its financial statement audit regarding the dollar amount spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

We believe that this footnote reporting activity would require an estimated 8 hours per institution to complete. We estimate that it would take private non-profit institutions 15,304 hours (1,913 × 8 = 15,304) to complete the required footnote activity. We estimate that it would take proprietary institutions 12,032 hours (1,504 × 8 = 12,032) to complete the required footnote activity. We estimate that it would take public institutions 14,504 hours (1,813 × 8 = 14,504) to complete the required footnote activity. The estimated § 668.23(d)(5) total burden is 41,840 hours with a total rounded estimated cost for all institutions of $1,949,326 (41,840 × $46.59 = $1,949,325.60).

The total estimated increase in burden to OMB Control Number 1845–0022 for § 668.23 is 56,280 hours with a total rounded estimated cost of $2,622,085.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	1,913	2,251	28,824	$1,342,910
Proprietary	1,504	1,527	12,952	603,434
Public	1,813	1,813	14,504	675,742
Total	5,230	5,591	56,280	2,622,086

Section 668.43—Institutional and programmatic information.

Requirements: Under proposed § 668.43(d), the Department would establish and maintain a website for posting and distributing key information and disclosures pertaining to the institution's educational programs. An institution would provide such information as the Department prescribes through a notice published in the **Federal Register** for disclosure to prospective and enrolled students through the website.

This information could include, but would not be limited to, the primary occupations that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site; the program's or institution's completion rates and withdrawal rates for full-time and less-than-full-time students, as reported to or calculated by the Department; the length of the program in calendar time; the total number of individuals enrolled in the program during the most recently completed award year; the total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program; the percentage of the individuals enrolled in the program during the most recently completed award year who received a title IV, HEA loan, a private education loan, or both; whether the program is programmatically accredited and the name of the accrediting agency; and the supplementary performance measures in proposed § 668.13(e).

The institution would be required to provide a prominent link and any other needed information to access the website on any web page containing academic, cost, financial aid, or admissions information about the program or institution. The Department could require the institution to modify a web page if the information about how to access the Department's website is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

In addition, the Department would require the institution to provide the relevant information to access the website to any prospective student or third party acting on behalf of the prospective student before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

Burden Calculations: The proposed NPRM regulatory language in § 668.43(d) would add burden to all institutions, domestic and foreign. The proposed changes in § 668.43(d) would require institutions to supply the Department with specific information about programs it is offering as well as disclose to enrolled and prospective students this information.

We believe that this reporting or disclosure activity would require an estimated 50 hours per institution. We estimate that it would take private non-profit institutions 95,650 hours (1,913 × 50 = 95,650) to complete the required reporting or disclosure activity. We estimate that it would take proprietary institutions 75,200 hours (1,504 × 50 = 75,200) to complete the required reporting or disclosure activity. We estimate that it would take public institutions 90,650 hours (1,813 × 50 = 90,650) to complete the required reporting/disclosure activity.

The total estimated increase in burden to OMB Control Number 1845–0022 for § 668.43 is 261,500 hours with a total rounded estimated cost of $12,183,286.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	1,913	1,913	95,650	$4,456,334
Proprietary	1,504	1,504	75,200	3,503,568.00
Public	1,813	1,813	90,650	4,223,384
Total	5,230	5,230	261,500	12,183,286.00

Section 668.156—Approved State process.

Requirements: The proposed changes in the NPRM to § 668.156 would clarify the requirements for the approval of a State process. Under proposed § 668.156, a State must apply to the Secretary for approval of its State process as an alternative to achieving a passing score on an approved, independently administered test or satisfactory completion of at least six credit hours or its recognized equivalent coursework for the purpose of determining a student's eligibility for title IV, HEA program. The State process is one of the three ability to benefit alternatives that an individual who is not a high school graduate could fulfill to receive title IV, HEA, Federal student aid to enroll in an eligible career pathway program.

The NPRM proposes to amend the monitoring requirement in redesignated § 668.156(c) to provide a participating institution that has failed to achieve the 85 percent success rate up to three years to achieve compliance.

The NPRM also proposes to amend redesignated § 668.156(e) to require that States report information on race, gender, age, economic circumstances, and education attainment and permit the Secretary to publish a notice in the **Federal Register** with additional information that the Department may require States to submit.

Burden Calculation: We estimate that it would take a State 160 hours to create and submit an application for a State Process to the Department under the regulations in Section 668.156(a) for a total of 1,600 hours (160 hours × 10 States).

We estimate that it would take a State an additional 40 hours annually to monitor the compliance of the institution's use of the State Process under Section 668.156(c) for a total of 400 hours (40 hours × 10 States). This time includes the development of any Corrective Action Plan for any institution the State finds not be complying with the State Process.

We estimate that it would take a State 120 hours to meet the reapplication requirements in Section 668.156(e) for a total of 1,200 hours (120 hours × 10 States).

The total hours associated with the change in the regulations as of the effective date of the regulations are estimated at a total of 3,200 hours of burden (320 hours × 10 States) with a total estimated cost of $1,149,088.00 in OMB Control Number 1845–NEW1.

APPROVED STATE PROCESS—1845–NEW1

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
State	10	30	3,200	$149,088
Total	10	30	3,200	149,088

Section 668.157—Eligible career pathway program.

Requirements: The NPRM proposes changes to subpart J by adding § 668.157 to clarify the documentation requirements for eligible career pathway program. This new section would dictate the documentation requirements for eligible career pathway programs for submission to the Department for approval as a title IV eligible program. Under § 668.157(b) we propose that, for career pathways programs that do not enroll students through a State process as defined in § 668.156, the Secretary would verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to proposed § 668.157(a). Under proposed § 668.157(b), we would also provide an institution with the opportunity to appeal any adverse eligibility decision.

Burden Calculations: The proposed NPRM regulatory language in § 668.157 would add burden to institutions to participate in the eligible career pathway programs. The proposed regulations in § 668.157 would require institutions to demonstrate to the Department that the eligible career pathways programs being offered meet the regulations as proposed.

We estimate that 1,000 institutions would submit the required documentation to determine eligibility for the eligible career pathway programs. We believe that this documentation and reporting activity would require an estimated 10 hours per program per institution. We estimate that each institution would document and report on five individual eligible career pathways programs for a total of 50 hours per institution. We estimate it would take private non-profit institutions 18,000 hours (360 institutions × 5 programs = 1,800 programs × 10 hours per program = 18,000) to complete the required documentation and reporting activity. We estimate that it would take proprietary institutions 6,500 hours (130 institutions × 5 programs = 650 programs × 10 hours per program = 6,500) to complete the required documentation and reporting activity. We estimate that it would take public institutions 25,500 hours (510 institutions × 5 programs = 2,550 programs × 10 hours per program = 25,500) to complete the required documentation/reporting activity. The total estimated increase in burden to OMB Control Number 1845–NEW2 for § 668.157 is 50,000 hours with a total estimated cost of $2,329,500.00.

ELIGIBLE CAREER PATHWAYS PROGRAM—1845–NEW2

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	360	1,800	18,000	$838,620
Proprietary	130	650	6,500	302,835
Public	510	2,550	25,500	1,188,045
Total	1,000	5,000	50,000	2,329,500

Section 668.171—General.

Requirements: The NPRM proposes to amend § 668.171(f) by adding several new events to the existing reporting requirements, and expanding others, that must be reported generally no later than 10 days following the event. Implementation of the proposed reportable events would make the Department more aware of instances that may impact an institution's financial responsibility or stability. The proposed reportable events are linked to the financial standards in § 668.171(b) and the proposed financial triggers in § 668.171(c) and (d) where there is no existing mechanism for the Department to know that a failure or a triggering event has occurred. Notification regarding these events would allow the Department to initiate actions to either obtain financial protection, or determine if financial protection is necessary, to protect students from the negative consequences of an institution's financial instability and possible closure.

The NPRM also proposes to amend § 668.171(g) by adding language which would require a public institution to provide to the Department a letter from an official of the government entity or other signed documentation acceptable to the Department. The letter or documentation must state that the institution is backed by the full faith and credit of the government entity. The Department also proposes similar amendments to apply to foreign institutions.

Burden Calculations: The proposed NPRM regulatory language in § 668.171(f) would add burden to institutions regarding evidence of financial responsibility. The proposed regulations in § 668.171(f) would require institutions to demonstrate to the Department that it met the triggers set forth in the regulations. We estimate that domestic and foreign, have the potential to hit a trigger that would require them to submit documentation to determine eligibility for continued participation in the title IV programs. The overwhelming majority of reporting would likely stem from the mandatory triggering event on gainful employment programs that are failing with limited reporting under additional events. We believe that this documentation and reporting activity would require an estimated 2 hours per institution. We estimate it would take private non-profit institutions 100 hours (50 institutions × 2 hours = 100) to complete the required documentation and reporting activity. We estimate that it would take proprietary institutions 1,300 hours (650 institutions × 2 hours = 1,300) to complete the required documentation and reporting activity.

The proposed NPRM regulatory language in § 668.171(g) would add burden to public institutions regarding evidence of financial responsibility. The proposed regulations in § 668.171(g) would require institutions to demonstrate to the Department that the public institution is backed by the full faith and credit of the government entity. We believe that this document filing would be done by the majority of the public institutions upon recertification of currently participating institutions. We estimate that 36 public institutions (two percent of the currently participating public institutions) would be required to recertify in a given year. We further estimate that it would take each institution 5 hours to procure the required documentation from the appropriate governmental agency for a total of 180 hours (36 institutions × 5 hours = 180 hours).

The total estimated increase in burden to OMB Control Number 1845–0022 for § 668.171 is 1,580 hours with a total rounded estimated cost of $73,612.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution
Private non-profit	50	50	100	4,659
Proprietary	650	650	1,300	60,567
Public	36	36	180	8,386
Total	736	736	1,580	73,612

Section 668.407—Student disclosure acknowledgments.

Requirements: The NPRM proposes in Subpart Q—Financial Value Transparency § 668.407(a)(1) that a student would be required to provide an acknowledgment of the D/E rate information for any year for which the Secretary notifies an institution that the eligible non-GE program has failing D/E rates for the year in which the D/E rates were most recently calculated by the Department.

Burden Calculations: The proposed NPRM regulatory language in § 668.407 would add burden to institutions. The proposed changes in § 668.407 would require institutions to develop and provide notices to enrolled and prospective students that a program has unacceptable D/E rates for non-GE programs or an unacceptable D/E rate and earnings premium measure for GE programs for the year in which the D/E rates or earnings premium measure were most recently calculated by the Department.

We believe that most institutions would develop the notice directing impacted students to the Department's disclosure website and make it available electronically to current and prospective students. We believe that this action would require an estimated 1 hour per affected program. We estimate that it would take private institutions 661 hours (661 programs × 1 hour = 661) to develop and deliver the required notice based on the information provided by the Department. We estimate that it would take public institutions 335 hours (335 programs × 1 hour = 335) to develop and deliver the required notice based on the information provided by the Department.

The proposed changes in § 668.407(a)(1) would require institutions to direct prospective and students enrolled in the non-GE programs that failed the D/E rates for the year in which the D/E rates were most recently calculated by the Department to the Department's disclosure website. We estimate that it would take the 401,600 students 10 minutes to read the notice and go to the disclosure website to acknowledge receiving the information for a total of hours (401,600 students × .17 hours = 68,272).

The total estimated increase in burden to OMB Control Number 1845–NEW3 for § 668.407 is 69,268 hours with a total rounded estimated cost of $1,548,388.

STUDENT DISCLOSURE ACKNOWLEDGMENTS—OMB CONTROL NUMBER 1845–NEW3

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution $22.00 per individual
Individual	401,600	401,600	68,272	$1,501,984
Private non-profit	173	661	661	30,796
Public	74	335	335	15,608
Total	401,847	402,596	69,268	1,548,388

Section 668.408—Reporting requirements.

Requirements: The NPRM proposes in Subpart Q—Financial Value Transparency to add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.

Burden Calculations: The proposed regulatory change would require an update to a Federal Student Aid data system. The reporting update would be made available for comment through a full public clearance package before being made available for use on or after the effective dates of the regulations. The burden changes would be assessed to the OMB Control Number assigned to the system.

Section 668.605—Student warnings and acknowledgments.

Requirements: The NPRM adds a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

In addition, warnings provided to students enrolled in GE programs would include a description of the academic and financial options available to continue their education in another program at the institution in the event that the program loses eligibility, including whether the students could transfer academic credit earned in the program to another program at the institution and which course credit would transfer; an indication of whether, in the event of a loss of eligibility, the institution would continue to provide instruction in the program to allow students to complete the program, and refund the tuition, fees, and other required charges paid to the institution for enrollment in the program; and an explanation of whether, in the event that the program loses eligibility, the students could transfer credits earned in the program to another institution through an established articulation agreement or teach-out.

The institution would be required to provide alternatives to an English-language warning for current and prospective students with limited English proficiency.

Burden Calculations: The proposed NPRM regulatory language in § 668.605 would add burden to institutions. The proposed changes in § 668.605 would require institutions to provide warning notices to enrolled and prospective students that a GE program has unacceptable D/E rates or an unacceptable earnings premium measure for the year in which the D/E rates or earnings premium measure were most recently calculated by the Department along with warnings about the potential loss of title IV eligibility.

We believe that most institutions would develop the warning and make it available electronically to current and prospective students. We believe that this action would require an estimated 1 hour per affected program. We estimate that it would take private institutions 86 hours (86 programs × 1 hour = 86) to develop and deliver the required warning based on the information provided by the Department. We estimate that it would take proprietary institutions 1,524 hours (1,524 programs × 1 hour = 1,524) to develop and deliver the required warning based on the information provided by the Department. We estimate that it would take public institutions 193 hours (193 programs × 1 hour = 193) to develop and deliver the required warning based on the information provided by the Department.

The proposed changes in § 668.605(d) would require institutions to provide alternatives to the English-language warning notices to enrolled and prospective students with limited English proficiency.

We estimate that it would take private institutions 688 hours (86 programs × 8 hours = 688) to develop and deliver the required alternate language the required warning based on the information provided by the Department. We estimate that it would take proprietary institutions 12,192 hours (1,524 programs × 8 hours = 12,192) to develop and deliver the required alternate language the required warning based on the information provided by the Department. We estimate that it would take public institutions 1,544 hours (193 programs × 8 hours = 1,544) to develop and deliver the required warning based on the information provided by the Department.

The proposed changes in § 668.605(e) would require institutions to provide the warning notices to students enrolled in the GE programs with failing metrics. We estimate that it would take the 703,200 students 10 minutes to read the warning and go to the disclosure website to acknowledge receiving the information for a total of 119,544 hours

(703,200 students × .17 hours = 119,544).

The proposed changes in § 668.605 (f) would require institutions to provide the warning notices to prospective students who express interest in the effected GE programs. We estimate that it would take the 808,680 prospective students 10 minutes to read the warning and go to the disclosure website to acknowledge receiving the information for a total of 137,476 hours (808,680 students × .17 hours = 137,476).

The total estimated increase in burden to OMB Control Number 1845–NEW4 for § 668.605 is 273,247 hours with a total rounded estimated cost of $6,410,456.

GE STUDENT WARNINGS AND ACKNOWLEDGMENTS—OMB CONTROL NUMBER 1845–NEW4

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per institution $22.00 per individual
Individual	1,511,880	1,511,880	257,020	$5,654,440
Private non-profit	86	172	774	36,061
Proprietary	873	3,048	13,716	639,028
Public	193	386	1,737	80,927
Total	1,513,032	1,515,486	273,247	6,410,456

Consistent with the discussions above, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For individuals, we have used the median hourly wage for all occupations, $22.00 per hour according to BLS. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000*. For institutions, lenders, and guaranty agencies we have used the median hourly wage for Education Administrators, Postsecondary, $46.59 per hour according to BLS. *https://www.bls.gov/oes/current/oes119033.htm*.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated cost $46.59 institutional $22.00 individual unless otherwise noted
§ 600.21	Amend § 600.21 to require an institution to notify the Secretary within 10 days of any update to information included in the GE program's certification.	Burden will be cleared at a later date through a separate information collection.	Costs will be cleared through separate information collection.
§ 668.14	Amend § 668.14(e) to establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions, such as the submission of a teach-out plan or agreement. Amend § 668.14(g) to establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.	1845–0022, +430 hrs	$+20,035.
§ 668.15	Remove and reserve § 668.15 thereby consolidating all financial responsibility factors, including those governing changes in ownership, under part 668, subpart L.	1845–0022, −2,448 hrs	$−114,051.
§ 668.16	Amend § 668.16(h) to require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available. Amend § 668.16(p) to strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.	1845–0022, +57,530 hrs	$+2,680,323.
§ 668.23	Amend § 668.23(d) to require that any domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution must provide documentation of the entity's status under the law of the jurisdiction under which the entity is organized. Amend § 668.23(d) to require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.	1845–0022, +56,280 hrs	$+2,622,086.
§ 668.43	Amend § 668.43 to establish a website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.	1845–0022, +261,500 hrs	$+12,183,286.
§ 668.156	Amend § 668.156 to clarify the requirements for the approval of a State process. The State process is one of the three ability to benefit alternatives that an individual who is not a high school graduate could fulfill to receive title IV, Federal student aid to enroll in an eligible career pathway program.	1845–NEW1, +3,200	$+149,088.
§ 668.157	Add a new § 668.157 to clarify the documentation requirements for eligible career pathway programs.	1845–NEW2, +50,000	$+2,329,500.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated cost $46.59 institutional $22.00 individual unless otherwise noted
§ 668.171	Amend § 668.171(f) to revise the set of conditions whereby an institution must report to the Department that a triggering event, described in § 668.171(c) and (d), has occurred. Amend § 668.171(g) to require public institutions to provide documentation from a government entity that confirms that the institution is a public institution and is backed by the full faith and credit of that government entity to be considered as financially responsible.	1845–0022, +1,580 hrs	$+73,612.
§ 668.407	Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.	1845–NEW3, +69,268	$+1,548,388.
§ 668.408	Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the reporting timeframe.	Burden will be cleared at a later date through a separate information collection.	Costs will be cleared through separate information collection.
§ 668.605	Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.	1845–NEW4, +273,247	$6,410,456.

The total burden hours and change in burden hours associated with each OMB Control number affected by the final regulations follows: 1845–0022, 1845–NEW1, 1845–NEW2, 1845–NEW3, 1845–NEW4.

Control No.	Total burden hours	Change in burden hours
1845–0022	2,663,120	+374,872
1845–NEW1	3,200	+3,200
1845–NEW2	50,000	+50,000
1845–NEW3	69,268	+69,268
1845–NEW4	273,247	+273,247
Total	3,058,835	770,587

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs in OMB, Attention: Desk Officer for the U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202)395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of the preamble.

We have prepared the Information Collection Request (ICR) for these collections. You may review the ICR which is available at *www.reginfo.gov*. Click on Information Collection Review. These collections are identified as collections 1845–022, 1845–NEW1, 1845–NEW2, 1845–NEW3, 1845–NEW4.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs—education, Reporting and recordkeeping requirements, Selective service system, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.10, amended October 28, 2022 at 87 FR 65426, is further amended by:

■ a. In paragraph (c)(1)(iii) removing the word ''and'' at the end of the paragraph;

■ b. Revising paragraph (c)(1)(iv); and

■ c. Adding paragraph (c)(1)(v).

The revisions and addition read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(1) * * *

(iv) For the first eligible prison education program under subpart P of 34 CFR part 668 offered at the first two additional locations (as defined in § 600.2) at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution; and

(v) For a gainful employment program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the eligibility of the program, update its application under § 600.21.

* * * * *

■ 3. Section 600.21 is amended by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(11)(iv) by removing the word ''or''.

■ c. Revising paragraph (a)(11)(v).

■ d. Adding paragraph (a)(11)(vi).

The revisions and addition read as follows:

§ 600.21 Updating application information.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary, in a manner prescribed by the Secretary and no later than 10 days after the change occurs, any change in the following:

* * * * *

(11) * * *

(v) Changing the program's name, CIP code, or credential level; or

(vi) Updating the certification pursuant to 34 CFR 668.604.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 4. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

■ 5. In § 668.2 amend paragraph (b) by adding, in alphabetical order, definitions of ''Annual debt-to-earnings rate,'' ''Classification of instructional program (CIP) code,'' ''Cohort period,'' ''Credential level,'' ''Debt-to-earnings rates (D/E rates),'' ''Discretionary debt-to-earnings rate (Discretionary D/E rate)'', ''Earnings premium,'' ''Earnings threshold,'' ''Eligible career pathway program,'' ''Eligible non-GE program,'' ''Federal agency with earnings data,'' ''Financial exigency'', ''Gainful employment program (GE program),'' ''Institutional grants and scholarships,'' ''Length of the program,'' ''Metropolitan statistical area,'' ''Poverty Guideline,'' ''Prospective student,'' ''Student,'' and ''Title IV loan'' to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Annual debt-to-earnings rate (Annual D/E rate): The ratio of a program's annual loan payment amount to the annual earnings of the students who completed the program, expressed as a percentage, as calculated under § 668.404.

* * * * *

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). Specific programs offered by institutions are classified using a six-digit CIP code.

Cohort period. The set of award years used to identify a cohort of students who completed a program and whose debt and earnings outcomes are used to calculate debt-to earnings rates and the earnings premium measure under subpart Q of this part. The Secretary uses a two-year cohort period to calculate the debt-to-earnings rates and earnings premium measure for a program when the number of students (after exclusions identified in §§ 668.403(e) and 668.404(c)) in the two-year cohort period is 30 or more. The Secretary uses a four-year cohort period to calculate the debt-to-earnings rates and earnings premium measure when the number of students completing the program in the two-year cohort period is fewer than 30 and when the number of students completing the program in the four-year cohort period is 30 or more. The cohort period covers consecutive award years that are—

(1) For the two-year cohort period—

(i) The third and fourth award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated, pursuant to §§ 668.403 and 668.404; or

(ii) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;

(B) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(C) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

(2) For the four-year cohort period—

(i) The third, fourth, fifth, and sixth award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated, pursuant to §§ 668.403 and 668.404; or

(ii) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated. For this purpose, a required medical or dental internship or residency is a supervised training program that meets the requirements in paragraph (1)(ii) of this definition.

Credential level. The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are master's degree, doctoral degree, first-professional degree (*e.g.,* MD, DDS, JD), and graduate certificate (including a postgraduate certificate).

Debt-to-earnings rates (D/E rates). The discretionary debt-to-earnings rate and annual debt-to-earnings rate as calculated under § 668.403.

* * * * *

Discretionary debt-to-earnings rate (Discretionary D/E rate). The percentage of a program's annual loan payment compared to the discretionary earnings of the students who completed the program, as calculated under § 668.403.

Earnings premium. The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under § 668.404. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of recent completers is less than the earnings threshold, the earnings premium is negative.

Earnings threshold. Based on data from a Federal agency with earnings data, the median earnings for working adults aged 25–34, who either worked during the year or indicated they were unemployed when interviewed, with only a high school diploma (or recognized equivalent)—

(1) In the State in which the institution is located; or

(2) Nationally, if fewer than 50 percent of the students in the program are located in the State where the institution is located while enrolled.

Eligible career pathway program. A program that combines rigorous and high-quality education, training, and other services that—

(1) Align with the skill needs of industries in the economy of the State or regional economy involved;

(2) Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*);

(3) Include counseling to support an individual in achieving the individual's education and career goals;

(4) Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(5) Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(6) Enable an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

(7) Help an individual enter or advance within a specific occupation or occupational cluster.

Eligible non-GE program. For purposes of subpart Q of this part, an educational program other than a GE program offered by an institution and approved by the Secretary to participate in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Includes all coursework associated with the program's credential level.

* * * * *

Federal agency with earnings data. A Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates and earnings threshold measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any title IV-eligible program during the cohort period and may include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

* * * * *

Financial exigency. A status declared by an institution to a governmental entity or its accrediting agency representing severe financial distress that, absent significant reductions in expenditures or increases in revenue, reductions in administrative staff or faculty, or the elimination of programs, departments, or administrative units, could result in the closure of the institution.

* * * * *

Gainful employment program (GE program). An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.

* * * * *

Institutional grants and scholarships. Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typically a grant, scholarship, fellowship, discount, or fee waiver.

* * * * *

Length of the program. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

* * * * *

Metropolitan statistical area: A core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.

* * * * *

Poverty Guideline. The Poverty Guideline for a single person in the continental United States, as published by the U.S. Department of Health and Human Services and available at *http://aspe.hhs.gov/poverty* or its successor site.

* * * * *

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.

* * * * *

Student. For the purposes of subparts Q and S of this part, an individual who received title IV, HEA program funds for enrolling in the program.

* * * * *

Title IV loan. A loan authorized under the William D. Ford Direct Loan Program (Direct Loan).

* * * * *

■ 6. Section 668.13 is amended by:
■ a. Removing paragraph (b)(3).
■ b. Revising paragraphs (c)(1) an (2).
■ c. Revising paragraph (d)(2)(ii).
■ d. Adding paragraph (e).

The revisions and addition read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) * * *

(1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution that is applying for a renewal of certification—

(*1*) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under subpart L of this part or the standards of administrative capability under § 668.16;

(*2*) Whose participation has been limited or suspended under subpart G of this part; or

(*3*) That voluntarily enters into provisional certification;

(D) The institution seeks to be reinstated to participate in a Title IV, HEA program after a prior period of participation in that program ended;

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 602; or

(F) The Secretary has determined that the institution is at risk of closure.

(G) The institution is under the provisions of subpart L.

(ii) An institution's certification becomes provisional upon notification from the Secretary if—

(A) The institution triggers one of the financial responsibility events under § 668.171(c) or (d) and, as a result, the Secretary requires the institution to post financial protection; or

(B) Any owner or interest holder of the institution with control over that institution, as defined in 34 CFR 600.31, also owns another institution with fines or liabilities owed to the Department and is not making payments in accordance with an agreement to repay that liability.

(iii) A proprietary institution's certification automatically becomes provisional at the start of a fiscal year if it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Federal educational assistance funds, as required under § 668.14(b)(16).

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraph (c)(3) of this section or subpart L, a provisionally certified institution's period of participation expires—

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution for its initial certification;

(ii) Not later than the end of the second complete award year following the date on which the Secretary provisionally certified an institution for reasons related to substantial liabilities owed or potentially owed to the Department for discharges related to borrower defense to repayment or false certification, or arising from claims under consumer protection laws;

(iii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution as a result of a change in ownership, recertification, reinstatement, automatic re-certification, or a failure under 668.14(b)(32); and

(iv) If the Secretary provisionally certified the institution as a result of its accrediting agency losing recognition, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

* * * * *

(d) * * *

(2) * * *

(ii) The revocation takes effect on the date that the Secretary transmits the notice to the institution.

* * * * *

(e) *Supplementary performance measures.* In determining whether to certify, or condition the participation of, an institution under §§ 668.13 and 668.14, the Secretary may consider the following, among other information at the program or institutional level:

(i) *Withdrawal rate.* The percentage of students who withdrew from the institution within 100 percent or 150 percent of the published length of the program.

(ii) *Debt-to-earnings rates.* The debt-to-earnings rates under § 668.403, if applicable.

(iii) *Earnings premium measure.* The earnings premium measure under § 668.404, if applicable.

(iv) *Educational and pre-enrollment expenditures.* The amounts the institution spent on instruction and instructional activities, academic support, and support services, and the amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures, as provided through a disclosure in the audited financial statements required under § 668.23(d).

(v) *Licensure pass rate.* If a program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, and the institution is required by an accrediting agency or State to report passage rates for the licensure exam for the program, such passage rates.

* * * * *

■ 7. Section 668.14 is amended by:
■ a. Adding paragraph (a)(3).
■ b. Revising paragraphs (b)(5), (17), (18), and (26).
■ c. In paragraph (b)(30)(ii)(C) removing the word "and" at the end of the paragraph.
■ d. Adding paragraphs (b)(32) through (b)(34).
■ e. Redesignating paragraphs (e) through (h) as paragraphs (h) through (k), respectively.
■ f. Adding new paragraphs (e) through (g).

The revisions and additions read as follows:

§ 668.14 Program participation agreement.

(a) * * *

(3) An institution's program participation agreement must be signed by—

(i) An authorized representative of the institution; and

(ii) For a proprietary or private nonprofit institution, an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution. The Secretary considers the following as examples of circumstances in which an entity has such power:

(A) If the entity has at least 50 percent control over the institution through direct or indirect ownership, by voting rights, by its right to appoint board members to the institution or any other entity, whether by itself or in combination with other entities or natural persons with which it is affiliated or related, or pursuant to a proxy or voting or similar agreement.

(B) If the entity has the power to block significant actions.

(C) If the entity is the 100 percent direct or indirect interest holder of the institution.

(D) If the entity provides or will provide the financial statements to meet any of the requirements of 34 CFR 600.20(g) or (h), or subpart L of this part.

(b) * * *

(5) It will comply with the provisions of subpart L relating to factors of financial responsibility;

* * * * *

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, Federal agencies, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, and State attorneys general have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law;

(18) It will not knowingly—

(i) Employ in a capacity that involves the administration of the title IV, HEA programs or the receipt of funds under those programs, an individual who has been

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds;

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(C) An owner, director, officer, or employee who exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program, requirement and is not making payments in accordance with an agreement to repay that liability; or

(D) A Ten-percent-or-higher equity owner, director, officer, principal, executive, or contractor at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the participating institution's annual title IV, HEA program funds.

(ii) Contract with any institution, third-party servicer, individual, agency, or organization that has, or whose owners, officers or employees have—

(A) Been convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds;

(B) Been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(C) Had its participation in the title IV programs terminated, certification revoked, or application for certification or recertification for participation in the title IV programs denied;

(D) Been an owner, director, officer, or employee who exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program requirement and is not making payments in accordance with an agreement to repay that liability; or

(E) Been a ten-percent-or-higher equity owner, director, officer, principal, executive, or contractor affiliated with another institution in any year in which the other institution incurred a loss of Federal funds in excess of 5 percent of the participating institution's annual title IV, HEA program funds.

* * * * *

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(ii) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student by limiting the number of hours in the program to the greater of—

(A) The required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency or the institution's accrediting agency; or

(B) Another State's required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, if certain criteria is met. This exception to paragraph (A) would only be applicable if the institution documents, with substantiation by a certified public accountant who prepares the institution's compliance audit report as required under § 668.23 that—

(*1*) A majority of students resided in that State while enrolled in the program during the most recently completed award year;

(*2*) A majority of students who completed the program in the most recently completed award year were employed in that State; or

(*3*) The other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State;

* * * * *

(32) In each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2), the institution must determine that each program eligible for title IV, HEA program funds—

(i) Is programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency;

(ii) Satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

(iii) Complies with all State consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions;

(33) It will not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in

the institution's administration of the title IV, HEA programs, any fraud or misconduct by the institution or its personnel, or returns of title IV, HEA funds required under § 668.22 unless the balance owed was the result of fraud on the part of the student; and

(34) It will not maintain policies and procedures to encourage, or condition institutional aid or other student benefits in a manner that induces, a student to limit the amount of Federal student aid, including Federal loan funds, that the student receives, except that the institution may provide a scholarship on the condition that a student forego borrowing if the amount of the scholarship provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.

* * * * *

(e) If an institution is provisionally certified, the Secretary may apply such conditions as are determined to be necessary or appropriate to the institution, including, but not limited to—

(1) For an institution that the Secretary determines may be at risk of closure—

(i) Submission of an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency; and

(ii) Submission to the Department of an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented;

(2) For an institution that the Secretary determines may be at risk of closure, that is teaching out or closing, or that is not financially responsible or administratively capable, the release of holds on student transcripts;

(3) Restrictions or limitations on the addition of new programs or locations;

(4) Restrictions on the rate of growth, new enrollment of students, or Title IV, HEA volume in one or more programs;

(5) Restrictions on the institution providing a teach-out on behalf of another institution;

(6) Restrictions on the acquisition of another participating institution, which may include, in addition to any other required financial protection, the posting of financial protection in an amount determined by the Secretary but not less than 10 percent of the acquired institution's Title IV, HEA volume for the prior fiscal year;

(7) Additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements;

(8) Limitations on the institution entering into a written arrangement with another eligible institution or an ineligible institution or organization for that other eligible institution or ineligible institution or organization to provide between 25 and 50 percent of the institution's educational program under § 668.5(a) or (c); and

(9) For an institution alleged or found to have engaged in misrepresentations to students, engaged in aggressive recruiting practices, or violated incentive compensation rules, requirements to hire a monitor and to submit marketing and other recruiting materials (*e.g.,* call scripts) for the review and approval of the Secretary.

(f) If a proprietary institution seeks to convert to nonprofit status following a change in ownership, the following conditions will apply to the institution following the change in ownership, in addition to any other conditions that the Secretary may deem appropriate:

(1) The institution must continue to meet the requirements under § 668.28(a) until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years in which the institution meets the requirements of § 668.14(b)(16) under its new ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later.

(2) The institution must continue to meet the gainful employment requirements of subpart S of this part until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years under its new ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later.

(3) The institution must submit regular and timely reports on agreements entered into with a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution, so long as the institution participates as a nonprofit institution.

(4) The institution may not advertise that it operates as a nonprofit institution for the purposes of Title IV, HEA until the Department approves the institution's request to convert to nonprofit status.

(g) If an institution is initially certified as a nonprofit institution, or if it has undergone a change of ownership and seeks to convert to nonprofit status, the following conditions will apply to the institution upon initial certification or following the change in ownership, in addition to any other conditions that the Secretary may deem appropriate:

(1) The institution must submit reports on accreditor and State authorization agency actions and any new servicing agreements within 10 business days of receipt of the notice of the action or of entering into the agreement, as applicable, until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years following initial certification, or two complete fiscal years after a change in ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later.

(2) The institution must submit a report and copy of the communications from the Internal Revenue Service or any State or foreign country related to tax-exempt or nonprofit status within 10 business days of receipt so long as the institution participates as a nonprofit institution.

* * * * *

§ 668.15 [Removed and Reserved]

■ 8. Remove and reserve § 668.15.

■ 9. Section 668.16 is amended by:

■ a. Revising the introductory text, and paragraphs (h_, (k), (m), (n) and (p); and

■ b. Adding paragraphs (q) through (v).

The revisions and additions read as follows:

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

* * * * *

(h) Provides adequate financial aid counseling with clear and accurate information to students who apply for title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling and financial aid communications advise students and families to accept the most beneficial types of financial assistance available to them and include information regarding—

(1) The cost of attendance of the institution as defined under section 472 of the HEA, including the individual components of those costs and a total of the estimated costs that will be owed directly to the institution, for students, based on their attendance status;

(2) The source and amount of each type of aid offered, separated by the type of the aid and whether it must be earned or repaid;

(3) The net price, as determined by subtracting total grant or scholarship aid included in paragraph (h)(2) of this section from the cost of attendance in paragraph (h)(1) of this section;

(4) The method by which aid is determined and disbursed, delivered, or applied to a student's account, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts; and

(5) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid, including the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

* * * * *

(k)(1) Is not, and has not been—

(i) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(ii) Engaging in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or previously exercised substantial control over the institution as defined in § 668.174(c)(3), who—

(i) Has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, Tribal, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(ii) Is a current or former principal or affiliate (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or exercised substantial control as defined in § 668.174(c)(3), of another institution whose misconduct or closure contributed to liabilities to the Federal government in excess of 5 percent of its title IV, HEA program funds in the award year in which the liabilities arose or were imposed;

* * * * *

(m)(1) Has a cohort default rate—

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent;

(2) Provided that—

(i) if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under § 668.187(a) or § 668.206(a), the Secretary allows the institution to continue to participate in the title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii) through (v) of this section;

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) of this section based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (m)(2)(i) of this section if it—

(A) Has timely filed a request for adjustment or appeal under § 668.209, § 668.210, or § 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent;

(B) Has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(*1*) Has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 with respect to either or both of the two rates, and the challenge or appeal is either pending or successful; or

(*2*) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful;

(iii) The institution may appeal the loss of full participation in a title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in § 668.192 or § 668.211 as applicable;

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates; and

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraphs (m)(1)(ii) and (2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

(n) Has not been subject to a significant negative action or a finding as by a State or Federal agency, a court or an accrediting agency where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive, and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.

* * * * *

(p) Develops and follows adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education, consistent with the following requirements:

(1) Adequate procedures to evaluate the validity of a student's high school diploma must include—

(i) Obtaining documentation from the high school that confirms the validity of the high school diploma, including at least one of the following—

(A) Transcripts;

(B) Written descriptions of course requirements; or

(C) Written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school;

(ii) If the high school is regulated or overseen by a State agency, Tribal agency, or Bureau of Indian Education, confirming with, or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency; and

(iii) If the Secretary has published a list of high schools that issue invalid high school diplomas, confirming that the high school does not appear on that list; and

(2) A high school diploma is not valid if it—

(i) Did not meet the applicable requirements established by the appropriate State agency, Tribal agency, or Bureau of Indian Education in the State where the high school is located and, if the student does not attend in-person classes, the State where the student was located at the time the diploma was obtained;

(ii) Has been determined to be invalid by the Department, the appropriate State agency in the State where the high school was located, or through a court proceeding;

(iii) Was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under 34 CFR 600.2; or

(iv) Was obtained from an entity that—

(A) Maintains a business relationship or is otherwise affiliated with the eligible institution at which the student is enrolled; and

(B) Is not accredited.

(q) Provides adequate career services to eligible students who receive title IV, HEA program assistance. In determining whether an institution provides adequate career services, the Secretary considers—

(1) The share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation;

(2) The number and distribution of career services staff;

(3) The career services the institution has promised to its students; and

(4) The presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution;

(r) Provides students, within 45 days of successful completion of other required coursework, geographically accessible clinical or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation;

(s) Disburses funds to students in a timely manner that best meets the students' needs. The Secretary does not consider the manner of disbursements to be consistent with students' needs if, among other conditions—

(1) The Secretary is aware of multiple verified and relevant student complaints;

(2) The institution has high rates of withdrawals attributable to delays in disbursements;

(3) The institution has delayed disbursements until after the point at which students have earned 100 percent of their eligibility for title IV, HEA funds, in accordance with the return to title IV, HEA requirements in 34 CFR 668.22; or

(4) The institution has delayed disbursements with the effect of ensuring the institution passes the 90/10 ratio;

(t) Offers gainful employment (GE) programs subject to subpart S of this part and—

(1) At least half of its total title IV, HEA funds in the most recent award year are not from programs that are ''failing'' under subpart S; and

(2) At least half of its full-time equivalent title IV-receiving students are not enrolled in programs that are ''failing'' under subpart S;

(u) Does not engage in misrepresentations, as defined in subpart F of this part, or aggressive and deceptive recruitment tactics or conduct, including as defined in subpart R of this part; or

(v) Does not otherwise appear to lack the ability to administer the title IV, HEA programs competently.

* * * * *

■ 10. Section 668.23 amended October 28, 2022 at 87 FR 65426, is further amended by

■ a. Revising paragraphs (a)(4), (a)(5), (d)(1), and (d)(2).

■ b. Adding paragraph (d)(5).

The revisions and addition read as follows:

§ 668.23 Compliance audits and audited financial statements.

(a) * * *

(4) *Submission deadline.* Except as provided by the Single Audit Act, chapter 75 of title 31, United States Code, an institution must submit annually to the Department its compliance audit and its audited financial statements by the date that is the earlier of—

(i) Thirty days after the later of the date of the auditor's report for the compliance audit and the date of the auditor's report for the audited financial statements; or

(ii) Six months after the last day of the institution's fiscal year.

(5) *Audit submission requirements.* In general, the Department considers the compliance audit and audited financial statements submission requirements of this section to be satisfied by an audit conducted in accordance with 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards, or the audit guides developed by and available from the Department of Education's Office of Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission.

* * * * *

(d) * * *

(1) *General.* To enable the Department to make a determination of financial responsibility, an institution must, to the extent requested by the Department, submit to the Department a set of acceptable financial statements for its latest complete fiscal year (or such fiscal years as requested by the Department or required by these regulations), as well as any other documentation the Department deems necessary to make that determination. Financial statements submitted to the Department must match the fiscal year end of the entity's annual return(s) filed with the Internal Revenue Service. Financial statements submitted to the Department must include the Supplemental Schedule required under § 668.172(a) and section 2 of Appendix A and B to subpart L of this part, and be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States and other guidance contained in 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards; or in audit guides developed by and available from the Department of Education's Office of Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in Accounting Standards Codification (ASC) 850. The disclosure requirements under this provision extend beyond those of ASC 850 to include all related parties and a level of detail that would enable the Department to readily identify the related party. Such information must include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any

transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) *Submission of additional information.* (i) In determining whether an institution is financially responsible, the Department may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements, or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Department.

(ii) For a domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution, the institution must provide documentation of the entity's status under the law of the jurisdiction under which the entity is organized, including, at a minimum, the date of organization, a current certificate of good standing, and a copy of the authorizing statute for such entity status. The institution must also provide documentation that is equivalent to articles of organization and bylaws and any current operating or shareholders' agreements. The Department may also require the submission of additional documents related to the entity's status under the foreign jurisdiction as needed to assess the entity's financial status. Documents must be translated into English.

* * * * *

(5) *Disclosure of amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures.* An institution must disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

* * * * *

■ 11. Section 668.32, amended October 28, 2022 at 87 FR 65426, is further amended by revising paragraphs (e)(2), (e)(3), and (e)(5) to read as follows:

§ 668.32 Student eligibility.

* * * * *

(e) * * *

(2) Has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part, and either—

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2;

(3) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of this part, and either—

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2;

* * * * *

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution, and either—

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2.

* * * * *

■ 12. Section 668.43, amended October 28, 2022 at 87 FR 65426, is further amended by:

■ a. Revising the section heading.

■ b. Revising paragraph (a)(5)(v).

■ c. Adding paragraph (d).

The revisions and addition read as follows:

§ 668.43 Institutional and programmatic information.

(a) * * *

(5) * * *

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, a list of all States where the institution is aware that the program does and does not meet such requirements;

* * * * *

(d)(1) *Disclosure website.* An institution must provide such information about the institution and educational programs it offers as the Secretary prescribes through a notice published in the **Federal Register** for disclosure to prospective students and enrolled students through a website established and maintained by the Secretary. The Secretary may conduct consumer testing to inform the design of the website. The Secretary may include on the website the following items, among others:

(i) The primary occupations (by name, SOC code, or both) that the program prepares students to enter, along with links to occupational profiles on O*NET (*www.onetonline.org*) or its successor site.

(ii) As reported to or calculated by the Secretary, the program's or institution's completion rates and withdrawal rates for full-time and less-than-full-time students.

(iii) The published length of the program in calendar time (*i.e.,* weeks, months, years).

(iv) The total number of individuals enrolled in the program during the most recently completed award year.

(v) As calculated by the Secretary, the program's debt-to-earnings rates;

(vi) As calculated by the Secretary, the program's earnings premium measure.

(vii) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on title IV loans during a period determined by the Secretary.

(viii) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the published length of the program.

(ix) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a title IV loan, a private loan, or both for enrollment in the program.

(x) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(xi) As provided by the Secretary, the median earnings of students who completed the program or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(xii) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(xiii) The supplementary performance measures in § 668.13(e).

(xiv) A link to the U.S. Department of Education's College Navigator website, or its successor site, or other similar Federal resource.

(2) *Program web pages.* The institution must provide a prominent link to, and any other needed information to access, the website maintained by the Secretary on any web page containing academic, cost, financial aid, or admissions information about the program or institution. The Secretary may require the institution to modify a web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

(3) *Distribution to prospective students.* The institution must provide the relevant information to access the website maintained by the Secretary to

any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

(4) *Distribution to enrolled students.* The institution must provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

* * * * *

■ 13. Section 668.91 is amended by:

■ a. In paragraph (a)(3)(v)(B)(*2*) removing the period at the end of the paragraph and adding, in its place, ''; and''.

■ b. Adding paragraph (a)(3)(vi).

The addition reads as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) * * *

(vi) In a termination action against a GE program based upon the program's failure to meet the requirements in § 668.403 or § 668.404, the hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation.

* * * * *

■ 14. Revise § 668.156 to read as follows:

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test or satisfactory completion of at least six credit hours or its recognized equivalent coursework for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) A State's application for approval of its State process must include—

(i) The institutions located in the State included in the proposed process, which need not be all of the institutions located in the State;

(ii) The requirements that participating institutions must meet to offer eligible career pathway programs through the State process;

(iii) A certification that, as of the date of the application, each proposed career pathway program intended for use through the State process constitutes an ''eligible career pathway program'' as defined in § 668.2 and as documented pursuant to § 668.157;

(iv) The criteria used to determine student eligibility for participation in the State process; and

(v) For an institution listed for the first time on the application, an assurance that not more than 33 percent of the institution's undergraduate regular students withdrew from the institution during the institution's latest completed award year. For purposes of calculating this rate, the institution must count all regular students who were enrolled during the latest completed award year, except those students who, during that period—

(A) Withdrew from, dropped out of, or were expelled from the institution; and

(B) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees.

(3) Before approving the State process, the Secretary will verify that a sample of the proposed eligible career pathway programs constitute an ''eligible career pathway program'' as defined in § 668.2 and as documented pursuant to § 668.157.

(b) For a State applying for approval for the first time, the Secretary may approve the State process for a two-year initial period if—

(1) The State's process satisfies the requirements contained in paragraphs (a), (c), and (d) of this section; and

(2) The State agrees that the total number of students who enroll through the State process during the initial period will total no more than the greater of 25 students or 1.0 percent of enrollment at each institution participating in the State process.

(c) A State process must—

(1) Allow the participation of only those students eligible under § 668.32(e)(3);

(2) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process, including the success rate as calculated in paragraph (f) of this section;

(3) Require corrective action if an institution is found to be in noncompliance with the State process requirements;

(4) Provide a participating institution that has failed to achieve the success rate required under paragraphs (e)(1) and (f) up to three years to achieve compliance;

(5) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements, including exceeding the total number of students referenced in paragraph (b)(2) of this section; and

(6) Prohibit an institution from participating in the State process for at least five years after termination.

(d)(1) The Secretary responds to a State's request for approval of its State process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.

(2) An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart—

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six-month period.

(e) After the initial two-year period described in paragraph (b) of this section, the State must reapply for continued participation and, in its application—

(1) Demonstrate that the students it admits under that process at each participating institution have a success rate as determined under paragraph (f) of this section that is within 85 percent of the success rate of students with high school diplomas;

(2) Demonstrate that the State's process continues to satisfy the requirements in paragraphs (a), (c), and (d) of this section; and

(3) Report information to the Department on the enrollment and success of participating students by eligible career pathway program and by race, gender, age, economic circumstances, and educational attainment, to the extent available.

(f) The State must calculate the success rate for each participating institution as referenced in paragraph (e)(1) of this section by—

(1) Determining the number of students with high school diplomas or equivalent who, during the applicable award year described in paragraph (g)(1) of this section, enrolled in the same programs as students participating in the State process at each participating institution and—

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas or equivalent who, during the applicable award year described in paragraph (g)(1) of this section, enrolled in the same programs as students participating in

the State process at each participating institution;

(3) Determining the number of students calculated in paragraph (f)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from each participating institution and received a 100 percent refund of their tuition under the institution's refund policies;

(4) Dividing the number of students determined under paragraph (f)(1) of this section by the number of students determined under paragraph (f)(3) of this section; and

(5) Making the calculations described in paragraphs (f)(1) through (f)(4) of this section for students who enrolled through a State process in each participating institution.

(g)(1) For purposes of paragraph (f) of this section, the applicable award year is the latest complete award year for which information is available.

(2) If no students are enrolled in an eligible career pathway program through a State process, then the State will receive a one-year extension to its initial approval of its State process.

(h) A State must submit reports on its State process, in accordance with deadlines and procedures established and published by the Secretary in the **Federal Register**, with such information as the Secretary requires.

(i) The Secretary approves a State process as described in paragraph (e) of this section for a period not to exceed five years.

(j)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(i) If a State has not terminated an institution from the State process under paragraph (c)(5) of this section for failure to meet the success rate, then the Secretary withdraws approval of the State process, except in accordance with paragraph (j)(1)(ii) of this section.

(ii) At the Secretary's discretion, under exceptional circumstances, the State process may be approved once for a two-year period.

(iii) If 50 percent or more participating institutions across all States do not meet the success rate in a given year, then the Secretary may lower the success rate to no less than 75 percent for two years.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(3) If the Secretary upholds the withdrawal of approval of a State process, then the State cannot reapply to the Secretary for a period of five years.

(Approved by the Office of Management and Budget under control number 1845–0049)
(Authority: 20 U.S.C. 1091(d))

■ 15. Adding § 668.157 to subpart J to read as follows:

§ 668.157 Eligible career pathway program.

(a) An institution demonstrates to the Secretary that a student is enrolled in an eligible career pathway program by documenting that—

(1) The student has enrolled in or is receiving all three of the following elements simultaneously—

(i) An eligible postsecondary program as defined in § 668.8;

(ii) Adult education and literacy activities under the Workforce Innovation and Opportunity Act as described in 34 CFR 463.30 that assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training; and

(iii) Workforce preparation activities as described in 34 CFR 463.34;

(2) The program aligns with the skill needs of industries in the State or regional labor market in which the institution is located, based on research the institution has conducted, including—

(i) Government reports identifying in-demand occupations in the State or regional labor market;

(ii) Surveys, interviews, meetings, or other information obtained by the institution regarding the hiring needs of employers in the State or regional labor market; and

(iii) Documentation that demonstrates direct engagement with industry;

(3) The skill needs described in paragraph (a)(2) of this section align with the specific coursework and postsecondary credential provided by the postsecondary program or other required training;

(4) The program provides academic and career counseling services that assist students in pursuing their credential and obtaining jobs aligned with skill needs described in paragraph (a)(2) of this section, and identifies the individuals providing the career counseling services;

(5) The appropriate education is offered, concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster through an agreement, memorandum of understanding, or some other evidence of alignment of postsecondary and adult education providers that ensures the secondary education is aligned with the students' career objectives; and

(6) The program is designed to lead to a valid high school diploma as defined in § 668.16(p) or its recognized equivalent.

(b) For career pathway programs that do not enroll students through a State process as defined in § 668.156, the Secretary will verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to paragraph (a) of this section. The Secretary provides an institution with the opportunity to appeal any adverse eligibility decision.

■ 16. Section 668.171, as amended October 28, 2022 at 87 FR 65495, is further amended by revising paragraph (b) introductory text, paragraphs (b)(3), and (c) through (i) to read as follows:

§ 668.171 General

* * * * *

(b) *General standards of financial responsibility.* Except as provided in paragraph (h) of this section, the Department considers an institution to be financially responsible if the Department determines that—

* * * * *

(3) The institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if—

(i) It fails to make refunds under its refund policy, return title IV, HEA program funds for which it is responsible under § 668.22, or pay title IV, HEA credit balances as required under § 668.164(h)(2);

(ii) It fails to make repayments to the Department for any debt or liability arising from the institution's participation in the title IV, HEA programs;

(iii) It fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days;

(iv) It fails to satisfy payroll obligations in accordance with its published payroll schedule;

(v) It borrows funds from retirement plans or restricted funds without authorization; or

(vi) It is subject to an action or event described in paragraph (c) of this section (mandatory triggering events), or an action or event that the Department has determined to have a material adverse effect on the financial condition of the institution under paragraph (d) of this section (discretionary triggering events); and

* * * * *

(c) *Mandatory triggering events.* (1) Except for the mandatory triggers that require a recalculation of the institution's composite score, the mandatory triggers in this paragraph (c) constitute automatic failures of financial responsibility. For any mandatory triggers under this paragraph (c) that result in a recalculated composite score of less than 1.0, and for those mandatory triggers that constitute automatic failures of financial responsibility, the Department will require the institution to provide financial protection as set forth in this subpart. The financial protection required under this paragraph is not less than 10 percent of the total title IV, HEA funding in the prior fiscal year. If the Department requires financial protection as a result of more than one mandatory or discretionary trigger, the Department will require separate financial protection for each individual trigger. The Department will consider whether the financial protection can be released following the institution's submission of two full fiscal years of audited financial statements following the Department's notice that requires the posting of the financial protection. In making this determination, the Department considers whether the administrative or financial risk caused by the event has ceased or been resolved, including full payment of all damages, fines, penalties, liabilities, or other financial relief.

(2) The following are mandatory triggers:

(i) *Debts, liabilities, and losses.* (A) For an institution or entity with a composite score of less than 1.5, other than a composite score calculated under 34 CFR 600.20(g) and § 668.176, that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, or a final judgment in a judicial proceeding, and as a result of the debt or liability, the recalculated composite score for the institution or entity is less than 1.0, as determined by the Department under paragraph (e) of this section;

(B) The institution or any entity whose financial statements were submitted in the prior fiscal year to meet the requirements of 34 CFR 600.20(g) or this subpart, is sued by a Federal or State authority to impose an injunction, establish fines or penalties, or to obtain financial relief such as damages, or through a qui tam lawsuit in which the Federal government has intervened, and the action was brought on or after July 1, 2024, and the action has been pending for 120 days, or a qui tam has been pending for 120 days following intervention, and no motion to dismiss has been filed, or if a motion to dismiss has been filed within 120 days and denied, upon such denial.

(C) The Department has initiated action to recover from the institution the cost of adjudicated claims in favor of borrowers under the loan discharge provisions in 34 CFR part 685 and, the recalculated composite score for the institution or entity as a result of the adjudicated claims is less than 1.0, as determined by the Department under paragraph (e) of this section; or

(D) For an institution or entity that has submitted an application for a change in ownership under 34 CFR 600.20 that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding described in paragraph (c)(2)(i)(B) or (C) of this section, at any point through the end of the second full fiscal year after the change in ownership has occurred.

(ii) *Withdrawal of owner's equity.* (A) For a proprietary institution whose composite score is less than 1.5, or for any proprietary institution through the end of the first full fiscal year following a change in ownership, and there is a withdrawal of owner's equity by any means, including by declaring a dividend, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; or is the equivalent of wages in a sole proprietorship or general partnership or a required dividend or return of capital; and

(B) As a result of that withdrawal, the institution's recalculated composite score for the entity whose financial statements were submitted to meet the requirements of § 668.23 for the annual submission, or § 600.20(g) or (h) for a change in ownership, is less than 1.0, as determined by the Department under paragraph (e) of this section.

(iii) *Gainful employment.* As determined annually by the Department, the institution received at least 50 percent of its title IV, HEA program funds in its most recently completed fiscal year from gainful employment (GE) programs that are ''failing'' under subpart S of this part.

(iv) *Teach-out plans.* The institution is required to submit a teach-out plan or agreement, by a State or Federal agency, an accrediting agency or other oversight body.

(v) *State actions.* The institution is cited by a State licensing or authorizing agency for failing to meet State or agency requirements and the agency provides notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement.

(vi) *Publicly listed entities.* For an institution that is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, the entity is subject to one or more of the following actions or events:

(A) *SEC actions.* The U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of any of the entity's securities pursuant to section 12(j) of the Securities Exchange Act of 1934 (the ''Exchange Act'') or suspends trading of the entity's securities pursuant to section 12(k) of the Exchange Act.

(B) *Other SEC actions.* The SEC files an action against the entity in district court or issues an order instituting proceedings pursuant to section 12(j) of the Exchange Act.

(C) *Exchange actions.* The exchange on which the entity's securities are listed notifies the entity that it is not in compliance with the exchange's listing requirements, or its securities are delisted.

(D) *SEC reports.* The entity failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date under 17 CFR 240.12b–25.

(E) *Foreign exchanges or Oversight Authority.* The entity is subject to an event, notification, or condition by a foreign exchange or oversight authority that the Department determines is equivalent to those identified in paragraphs (c)(2)(vi)(A)–(D) of this section.

(vii) *Non-Federal educational assistance funds.* For its most recently completed fiscal year, a proprietary institution did not receive at least 10 percent of its revenue from sources other than Federal educational assistance, as provided under § 668.28(c). The financial protection provided under this requirement will remain in place until the institution passes the 90/10 revenue requirement for two consecutive years.

(viii) *Cohort default rates.* The institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless—

(A) The institution files a challenge, request for adjustment, or appeal under subpart N of this part with respect to its rates for one or both of those fiscal years; and

(B) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both of those years or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

(ix) *Loss of eligibility.* The institution has lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school.

(x) *Contributions and distributions.* (A) An institution's financial statements required to be submitted under § 668.23 reflect a contribution in the last quarter of the fiscal year, and the institution then made a distribution during the first two quarters of the next fiscal year; and

(B) The offset of such distribution against the contribution results in a recalculated composite score of less than 1.0, as determined by the Department under paragraph (e) of this section.

(xi) *Creditor events.* As a result of an action taken by the Department, the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement.

(xii) *Declaration of financial exigency.* The institution declares a state of financial exigency to a Federal, State, Tribal or foreign governmental agency or its accrediting agency.

(xiii) *Receivership.* The institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law.

(d) *Discretionary triggering events.* The Department may determine that an institution is not able to meet its financial or administrative obligations if the Department determines that a discretionary triggering event is likely to have a significant adverse effect on the financial condition of the institution. For those discretionary triggers that the Department determines will have a significant adverse effect on the financial condition of the institution, the Department will require the institution to provide financial protection as set forth in this subpart. The financial protection required under this paragraph is not less than 10 percent of the total title IV, HEA funding in the prior fiscal year. If the Department requires financial protection as a result of more than one mandatory or discretionary trigger, the Department will require separate financial protection for each individual trigger. The Department will consider whether the financial protection can be released following the institution's submission of two full fiscal years of audited financial statements following the Department's notice that requires the posting of the financial protection. In making this determination, the Department considers whether the administrative or financial risk caused by the event has ceased or been resolved, including full payment of all damages, fines, penalties, liabilities, or other financial relief. The discretionary triggers include, but are not limited to, the following events:

(1) *Accrediting agency and government agency actions.* The institution's accrediting agency or a Federal, State, local or Tribal authority places the institution on probation or issues a show-cause order or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization or eligibility.

(2) *Other defaults, delinquencies, creditor events, and judgments.*

(i) Except as provided in paragraph (c)(2)(xi) of this section, the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing arrangement;

(ii) Under that line of credit, loan agreement, security agreement, or other financing arrangement, a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose on the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;

(iii) Any creditor of the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart takes action to terminate, withdraw, limit, or suspend a loan agreement or other financing arrangement or calls due a balance on a line of credit with an outstanding balance;

(iv) The institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart enters into a line of credit, loan agreement, security agreement, or other financing arrangement whereby the institution or entity may be subject to a default or other adverse condition as a result of any action taken by the Department; or

(v) The institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart has a judgment awarding monetary relief entered against it that is subject to appeal or under appeal.

(3) *Fluctuations in Title IV volume.* There is a significant fluctuation between consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs.

(4) *High annual dropout rates.* As calculated by the Department, the institution has high annual dropout rates.

(5) *Interim reporting.* For an institution required to provide additional financial reporting to the Department due to a failure to meet the financial responsibility standards in this subpart or due to a change in ownership, there are negative cash flows, failure of other liquidation ratios, cash flows that significantly miss the projections submitted to the Department, withdrawal rates that increase significantly, or other indicators of a material change in the financial condition of the institution.

(6) *Pending borrower defense claims.* There are pending claims for borrower relief discharge under 34 CFR 685.400 from students or former students of the institution and the Department has formed a group process to consider claims under 34 CFR 685.402 and, if approved, those claims could be subject to recoupment.

(7) *Discontinuation of programs.* The institution discontinues academic programs, that affect more than 25 percent of enrolled students.

(8) *Closure of locations.* The institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students.

(9) *State citations.* The institution is cited by a State licensing or authorizing

agency for failing to meet State or agency requirements.

(10) *Loss of program eligibility.* One or more programs at the institution has lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school or its programs.

(11) *Exchange disclosures.* If an institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law.

(12) *Actions by another Federal agency.* The institution is cited and faces loss of education assistance funds from another Federal agency if it does not comply with the agency's requirements.

(e) *Recalculating the composite score.* When a recalculation of an institution's most recent composite score is required by the mandatory triggering events described in paragraph (c) of this section, the Department makes the recalculation as follows:

(1) For a proprietary institution, debts, liabilities, and losses (including cumulative debts, liabilities, and losses for all triggering events) since the end of the prior fiscal year incurred by the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23 or this subpart, and debts, liabilities, and losses (including cumulative debts, liabilities, and losses for all triggering events) through the end of the first full fiscal year following a change in ownership incurred by the entity whose financial statements were submitted for 34 CFR 600.20(g) or (h), will be adjusted as follows:

(i) For the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount.

(ii) For the equity ratio, decreasing modified equity by that amount.

(iii) For the net income ratio, decreasing income before taxes by that amount.

(2) For a nonprofit institution, debts, liabilities, and losses (including cumulative debts, liabilities, and losses for all triggering events) since the end of the prior fiscal year incurred by the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23 or this subpart, and debts, liabilities, and losses (including cumulative debts, liabilities, and losses for all triggering events) through the end of the first full fiscal year following a change in ownership incurred by the entity whose financial statements were submitted for 34 CFR 600.20(g) or (h), will be adjusted as follows:

(i) For the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount.

(ii) For the equity ratio, decreasing modified net assets by that amount.

(iii) For the net income ratio, decreasing change in net assets without donor restrictions by that amount.

(3) For a proprietary institution, the withdrawal of equity (including cumulative withdrawals of equity) since the end of the prior fiscal year from the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23 or this subpart, and the withdrawal of equity (including cumulative withdrawals of equity) through the end of the first full fiscal year following a change in ownership from the entity whose financial statements were submitted for 34 CFR 600.20(g) or (h), will be adjusted as follows:

(i) For the primary reserve ratio, decreasing adjusted equity by that amount.

(ii) For the equity ratio, decreasing modified equity by that amount.

(4) For a proprietary institution, a contribution and distribution in the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23, this subpart, or 34 CFR 600.20(g) will be adjusted as follows:

(i) For the primary reserve ratio, decreasing adjusted equity by the amount of the distribution.

(ii) For the equity ratio, decreasing modified equity by the amount of the distribution.

(f) *Reporting requirements.* (1) In accordance with procedures established by the Department, an institution must timely notify the Department of the following actions or events:

(i) For a liability incurred under paragraph (c)(2)(i)(A) of this section, no later than 10 days after the date of written notification to the institution or entity of the final judgment or determination.

(ii) For a lawsuit described in paragraph (c)(2)(i)(B) of this section, no later than 10 days after the institution or entity is served with the complaint, and an updated notice must be provided 10 days after the suit has been pending for 120 days.

(iii) No later than 10 days after the institution receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any local, State, Tribal, Federal, or foreign government or government entity.

(iv) For a withdrawal of owner's equity described in paragraph (c)(2)(ii) of this section—

(A) For a capital distribution that is the equivalent of wages in a sole proprietorship or general partnership, no later than 10 days after the date the Department notifies the institution that its composite score is less than 1.5. In response to that notice, the institution must report the total amount of the wage-equivalent distributions it made during its prior fiscal year and any distributions that were made to pay any taxes related to the operation of the institution. During its current fiscal year and the first six months of its subsequent fiscal year (18-month period), the institution is not required to report any distributions to the Department, provided that the institution does not make wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year, less any distributions that were made to pay any taxes related to the operation of the institution. However, if the institution makes wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year less any distributions that were made to pay any taxes related to the operation of the institution at any time during the 18-month period, it must report each of those distributions no later than 10 days after they are made, and the Department recalculates the institution's composite score based on the cumulative amount of the distributions made at that time;

(B) For a distribution of dividends or return of capital, no later than 10 days after the dividends are declared or the amount of return of capital is approved; or

(C) For a related party receivable/other assets, no later than 10 days after that receivable/other assets are booked or occur.

(v) For a contribution and distribution described in paragraph (c)(2)(x) of this section, no later than 10 days following each transaction.

(vi) For the provisions relating to a publicly listed entity under paragraph (c)(2)(vi) or (d)(11) of this section, no later than 10 days after the date that such event occurs.

(vii) For any action by an accrediting agency, Federal, State, local or Tribal authority that is either a mandatory or discretionary trigger, no later than 10 days after the date on which the institution is notified of the action.

(viii) For the creditor events described in paragraph (c)(2)(xi) of this section, no later than 10 days after the date on which the institution is notified of the action by its creditor.

(ix) For the other defaults, delinquencies, or creditor events described in paragraph (d)(2)(i), (ii), (iii), and (iv) of this section, no later than 10 days after the event occurs, with an update no later than 10 days after the creditor waives the violation, or the creditor imposes sanctions or penalties, including sanctions or penalties imposed in exchange for or as a result of granting the waiver. For a monetary judgment subject to appeal or under appeal described in paragraph (d)(2)(v), no later than 10 days after the court enters the judgment, with an update no later than 10 days after the appeal is filed or the period for appeal expires without a notice of appeal being filed. If an appeal is filed, no later than 10 days after the decision on the appeal is issued.

(x) For the non-Federal educational assistance funds provision in paragraph (c)(2)(vii) of this section, no later than 45 days after the end of the institution's fiscal year, as provided in § 668.28(c)(3).

(xi) For an institution or entity that has submitted an application for a change in ownership under 34 CFR 600.20 that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding described in paragraph (c)(2)(i)(B) or (C) of this section, the institution must report this no later than ten days after the action. This reporting requirement is applicable to any action described herein occurring through the end of the second full fiscal year after the change in ownership has occurred.

(xii) For a discontinuation of academic programs described in paragraph (d)(7) of this section, no later than 10 days after the discontinuation of programs.

(xiii) For a failure to meet any of the standards in paragraph (b) of this section, no later than 10 days after the institution ceases to meet the standard.

(xiv) For a declaration of financial exigency, no later than 10 days after the institution communicates its declaration to a Federal, State, Tribal or foreign governmental agency or its accrediting agency.

(xv) If the institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law, no later than 10 days after either the filing for receivership or the order appointing a receiver or appointing a person of similar status under foreign law, as applicable.

(xvi) The institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students no later than 10 days after the closure that meets or exceeds these thresholds.

(xvii) If the institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law, no later than ten days after the public filing.

(2) The Department may take an administrative action under paragraph (i) of this section against an institution, or determine that the institution is not financially responsible, if it fails to provide timely notice to the Department as provided under paragraph (f)(1) of this section, or fails to respond, within the timeframe specified by the Department, to any determination made, or request for information, by the Department under paragraph (f)(3) of this section.

(3)(i) In its notice to the Department under this paragraph, or in its response to a preliminary determination by the Department that the institution is not financially responsible because of a triggering event under paragraph (c) or (d) of this section, in accordance with procedures established by the Department, the institution may—

(A) Show that the creditor waived a violation of a loan agreement under paragraph (d)(2) of this section. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (d)(2)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and demonstrate that complying with those actions will not significantly affect the institution's ability to meet its financial obligations;

(B) Show that the triggering event has been resolved, or demonstrate that the institution has insurance that will cover all or part of the liabilities that arise under paragraph (c)(2)(i)(A) of this section; or

(C) Explain or provide information about the conditions or circumstances that precipitated a triggering event under paragraph (c) or (d) of this section that demonstrates that the triggering event has not had, or will not have, a material adverse effect on the financial condition of the institution.

(ii) The Department will consider the information provided by the institution in determining whether to issue a final determination that the institution is not financially responsible.

(g) *Public institutions.* (1) The Department considers a domestic public institution to be financially responsible if the institution—

(i) Notifies the Department that it is designated as a public institution by the State, local, or municipal government entity, Tribal authority, or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter or other documentation acceptable to the Department and signed by an official of that government entity confirming that the institution is a public institution and is backed by the full faith and credit of the government entity. This letter must be submitted before the institution's initial certification, upon a change in ownership and request to be recognized as a public institution, and for the first re-certification of a public institution after the effective date of these regulations. Thereafter, the letter must be submitted—

(A) When the institution submits an application for re-certification following any period of provisional certification;

(B) Within 10 business days following a change in the governmental status of the institution whereby the institution is no longer backed by the full faith and credit of the government entity; or

(C) Upon request by the Department;

(iii) Is not subject to a condition of past performance under § 668.174; and

(iv) Is not subject to an automatic mandatory triggering event as described in paragraph (c) of this section or a discretionary triggering event as described in paragraph (d) of this section that the Department determines will have a significant adverse effect on the financial condition of the institution.

(2) The Department considers a foreign public institution to be financially responsible if the institution—

(i) Notifies the Department that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter or other documentation acceptable to the Department and signed by an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity. This letter must be submitted before the institution's initial certification, upon a change in ownership and request to be recognized as a public institution, and for the first re-certification of a public institution after the effective date of these regulations. Thereafter, the letter must be submitted in the following circumstances—

(A) When the institution submits an application for re-certification following any period of provisional certification;

(B) Within 10 business days following a change in the governmental status of the institution whereby the institution is no longer backed by the full faith and credit of the government entity; or

(C) Upon request by the Department;

(iii) Is not subject to a condition of past performance under § 668.174 and

(iv) Is not subject to an automatic mandatory triggering event as described in paragraph (c) of this section or a discretionary triggering event as described in paragraph (d) of this section that the Department determines will have a significant adverse effect on the financial condition of the institution.

(h) *Audit opinions and disclosures.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Department does not consider the institution to be financially responsible if the institution's audited financial statements—

(1) Include an opinion expressed by the auditor that was an adverse, qualified, or disclaimed opinion, unless the Department determines that the adverse, qualified, or disclaimed opinion does not have a significant bearing on the institution's financial condition; or

(2) Include a disclosure in the notes to the institution's or entity's audited financial statements about the institution's or entity's diminished liquidity, ability to continue operations, or ability to continue as a going concern, unless the Department determines that the diminished liquidity, ability to continue operations, or ability to continue as a going concern has been alleviated. The Department may conclude that diminished liquidity, ability to continue operations, or ability to continue as a going concern has not been alleviated even if the disclosure provides that those concerns have been alleviated.

(i) *Administrative actions.* If the Department determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial statements and compliance audits by the date and in the manner required under § 668.23, the Department may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs;

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d); or

(3) Deny the institution's application for certification or recertification to participate in the title IV, HEA programs.

■ 17. Section 668.174 is amended by:

■ a. Revising paragraphs (a)(2) and (b)(2)(i);

■ b. Adding paragraph (b)(3); and

■ c. Revising paragraph (c)(1).

The revisions and addition read as follows:

§ 668.174 Past performance

(a) * * *

(2) In either of its two most recently submitted compliance audits had a final audit determination or in a Departmentally issued report, including a final program review determination report, issued in its current fiscal year or either of its preceding two fiscal years, had a program review finding that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

* * * * *

(b) * * *

(2) * * *

(i) The institution notifies the Department, within the time permitted and as provided under 34 CFR 600.21, that the person or entity referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

* * * * *

(3) An institution is not financially responsible if an owner who exercises substantial control, or the owner's spouse, has been in default on a Federal student loan, including parent PLUS loans, in the preceding five years, unless—

(i) The defaulted Federal student loan has been fully repaid and five years have elapsed since the repayment in full;

(ii) The defaulted Federal student loan has been approved for, and the borrower is in compliance with, a rehabilitation agreement and has been current for five consecutive years; or

(iii) The defaulted Federal student loan has been discharged, canceled or forgiven by the Department.

(c) * * *

(1) An ownership interest is defined in 34 CFR 600.31(b).

* * * * *

■ 18. Section 668.175 is amended by revising paragraphs (b), (c), (d), (f)(1) and (2) to read as follows:

§ 668.175 Alternative standard and requirements.

* * * * *

(b) *Letter of credit or cash escrow alternative for new institutions.* A new institution that is not financially responsible solely because the Department determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Department, or providing other surety described under paragraph (h)(2)(i) of this section, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Department determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) *Financial protection alternative for participating institutions.* A participating institution that is not financially responsible, either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b), (c), or (d), or because of an audit opinion or disclosure about the institution's liquidity, ability to continue operations, or ability to continue as a going concern described under § 668.171(h), qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Department, or providing other financial protection described under paragraph (h)(2)(i) of this section, for an amount determined by the Department that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution. For purposes of a failure under § 668.171(b)(2) or (3), the institution must also remedy the issue(s) that gave rise to the failure to the Department's satisfaction.

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Department determines that its composite score under § 668.172 is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Department determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statements for its most recently completed fiscal year, the Department determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statements for each of its subsequent two fiscal years, the Department determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years, or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Department.

(2) Under the zone alternative, the Department—

(i) Requires the institution to make disbursements to eligible students and parents, and to otherwise comply with the provisions, under either the heightened cash monitoring or reimbursement payment method described in § 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any event that causes the institution, or related entity as defined in Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statements; or

(B) Any losses that are unusual in nature or infrequently occur, or both, as defined in accordance with Accounting Standards Update (ASU) No. 2015–01 and ASC 225;

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under § 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described in paragraph (d)(2)(ii) of this section for which the institution is required to provide information, in accordance with procedures established by the Department, notify the Department no later than 10 days after that event occurs; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraph (d)(2) or (3) of this section, the Department may determine that the institution no longer qualifies under this alternative.

* * * * *

(f) *Provisional certification alternative.* (1) The Department may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if—

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b), its recalculated composite score under § 668.171(e) is less than 1.0, it is subject to an action or event under § 668.171(c), or an action or event under paragraph (d) has an adverse material effect on the institution as determined by the Department, or because of an audit opinion or going concern disclosure described in § 668.171(h); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Department that it has satisfied or resolved that condition; and

(2) Under this alternative, the institution must—

(i) Provide to the Department an irrevocable letter of credit that is acceptable and payable to the Department, or provide other financial protection described under paragraph (h) of this section, for an amount determined by the Department that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution that the Department determines is backed by the full faith and credit of the State or equivalent governmental entity;

(ii) Remedy the issue(s) that gave rise to its failure under § 668.171(b)(2) or (3) to the Department's satisfaction; and

(iii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

* * * * *

§ 668.176 [Redesignated]

■ 19. Redsignate § 668.176 as § 668.177.

■ 20. Add § 668.176 to read as follows:

§ 668.176 Change in Ownership.

(a) *Purpose.* To continue participation in the title IV, HEA programs during and following a change in ownership, institutions must meet the financial responsibility requirements in this section.

(b) *Materially complete application.* To meet the requirements of a materially complete application under 34 CFR 600.20(g)(3)(iii) and (iv)—

(1) An institution undergoing a change of ownership and control as provided under 34 CFR 600.31 must submit audited financial statements of its two most recently completed fiscal years prior to the change in ownership, at the level of the change in ownership or the level of financial statements required by the Department, that are prepared and audited in accordance with the requirements of § 668.23(d);

(2) The institution must submit audited financial statements of the institution's new owner's two most recently completed fiscal years prior to the change in ownership that are prepared and audited in accordance with the requirements of § 668.23 at the highest level of unfractured ownership or at the level required by the Department.

(i) If the institution's new owner does not have two years of acceptable audited financial statements, the institution must provide financial protection in the form of a letter of credit or cash to the Department in the amount of 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year;

(ii) If the institution's new owner only has one year of acceptable financial statements, the institution must provide financial protection in the form of a letter of credit or cash to the Department in the amount of 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year; or

(iii) For an entity where no individual new owner obtains control, but the combined ownership of the new owners is equal to or exceeds the ownership share of the existing ownership, financial protection in the form of a letter of credit or cash to the Department in the amount of 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, based on the combined ownership share of the new owners, except for any new owner that submits two years or one year of acceptable audited financial statements as described in paragraphs (b)(2)(i) and (ii) of this section.

(3) The institution must meet the financial responsibility requirements. In general, the Department considers an institution to be financially responsible only if it—

(i) For a for-profit institution evaluated at the ownership level required by the Department for the new owner—

(A) Has not had operating losses in either or both of its two latest fiscal years that in sum result in a decrease in tangible net worth in excess of 10 percent of the institution's tangible net worth at the beginning of the first year of the two-year period. The Department may calculate an operating loss for an institution by excluding prior period adjustment and the cumulative effect of changes in accounting principle. For purposes of this section, the calculation of tangible net worth must exclude all related party accounts receivable/other assets and all assets defined as intangible in accordance with the composite score;

(B) Has, for its two most recent fiscal years, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. The calculation of tangible net worth excludes all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score; and

(C) Has a passing composite score and meets the other financial requirements of this subpart for its most recently completed fiscal year.

(ii) For a nonprofit institution evaluated at the ownership level required by the Department for the new owner—

(A) Has, at the end of its two most recent fiscal years, positive net assets without donor restrictions. The Department will exclude all related party receivables/other assets from net assets without donor restrictions and all assets classified as intangibles in accordance with the composite score;

(B) Has not had an excess of net assets without donor restriction expenditures over net assets without donor restriction revenues over both of its two latest fiscal years that results in a decrease exceeding 10 percent in either the net assets without donor restrictions from the start to the end of the two-year period or the net assets without donor restriction in either one of the two years. The Department may exclude from net changes in fund balances for the operating loss calculation prior period adjustment and the cumulative effect of changes in accounting principle. In calculating the net assets without donor restriction, the Department will exclude all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score; and

(C) Has a passing composite score and meets the other financial requirements of this subpart for its most recently completed fiscal year.

(iii) For a public institution, has its liabilities backed by the full faith and credit of a State or equivalent governmental entity.

(4) For a for-profit or nonprofit institution that is not financially responsible under paragraph (b)(3) of this section, provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

(c) *Acquisition debt.* (1) Notwithstanding any other provision in this section, the Department may determine that the institution is not financially responsible following a change in ownership if the amount of debt assumed to complete the change in ownership requires payments (either periodic or balloon) that are inconsistent with available cash to service those payments based on enrollments for the period prior to when the payment is or will be due.

(2) For a for-profit or nonprofit institution that is not financially responsible under this provision, provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

(d) Terms of the extension. To meet the requirements for a temporary provisional program participation agreement following a change in ownership, as described in 34 CFR 600.20(h)(3)(i), an institution must meet the following requirements:

(1) For a proprietary institution or a nonprofit institution—

(i) The institution must provide the Department a same-day balance sheet for a proprietary institution or a statement of financial position for a nonprofit institution that shows the financial position of the institution under its new owner, as of the day after the change in ownership, and that meets the following requirements:

(A) The same-day balance sheet or statement of financial position must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) published by the U.S. Government Accountability Office (GAO);

(B) As part of the same-day balance sheet or statement of financial position, the institution must include a disclosure that includes all related-party transactions, and such details as would enable the Department to identify the related party in accordance with the requirements of § 668.23(d). Such information must include, but is not limited to, the name, location, and description of the related entity, including the nature and amount of any transaction between the related party and the institution, financial or otherwise, regardless of when it occurred;

(C) Such balance sheet or statement of financial position must be a consolidated same-day financial statement at the level of highest unfractured ownership or at a level determined by the Department for an ownership of less than 100 percent;

(D) The same-day balance sheet or statement of financial position must demonstrate an acid test ratio of at least 1:1. The acid test ratio must be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio must exclude all related party receivables/other assets and all assets classified as intangibles in accordance with the composite score;

(E) A proprietary institution's same-day balance sheet must demonstrate a positive tangible net worth the day after the change in ownership. A positive tangible net worth occurs when the tangible assets exceed liabilities. The calculation of tangible net worth must exclude all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score; and

(F) A nonprofit institution's statement of financial position must have positive net assets without donor restriction the day after the change in ownership. The calculation of net assets without donor restriction must exclude all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score.

(ii) If the institution fails to meet the requirements in paragraphs (d)(1)(i) of this section, the institution must provide financial protection in the form of a letter of credit or cash to the Department in the amount of at least 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, or an amount determined by the Department, and must follow the zone requirements of § 668.175(d); and

(2) For a public institution, the institution must have its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity, or must follow the requirements of this section for a proprietary or nonprofit institution.

■ 21. Add subpart Q to part 668 to read as follows:

Subpart Q—Financial Value Transparency

Sec.

Subpart Q—Financial Value Transparency

§ 668.401 Financial value transparency scope and purpose.

This subpart applies to a GE program or eligible non-GE program offered by an eligible institution, and establishes the rules and procedures under which—

(a) An institution reports information about the program to the Secretary; and

(b) The Secretary assesses the program's debt and earnings outcomes.

§ 668.402 Financial value transparency framework.

(a) *General.* The Secretary assesses the program's debt and earnings outcomes using debt-to-earnings rates (D/E rates) and an earnings premium measure.

(b) *Debt-to-earnings rates.* The Secretary calculates for each award year two D/E rates for an eligible program, the discretionary debt-to-earnings rate and the annual debt-to-earnings rate, using the procedures in §§ 668.403 and 668.405.

(c) *Outcomes of the D/E rates.* (1) A program passes the D/E rates if—

(i) Its discretionary debt-to-earnings rate is less than or equal to 20 percent;

(ii) Its annual debt-to-earnings rate is less than or equal to 8 percent; or

(iii) The denominator (median annual or discretionary earnings) of either rate is zero and the numerator (median debt payments) is zero.

(2) A program fails the D/E rates if—

(i) Its discretionary debt-to-earnings rate is greater than 20 percent or the income for the denominator of the rate (median discretionary earnings) is negative or zero and the numerator (median debt payments) is positive; and

(ii) Its annual debt-to-earnings rate is greater than 8 percent or the denominator of the rate (median annual earnings) is zero and the numerator (median debt payments) is positive.

(d) *Earnings premium measure.* For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in § 668.404 and 668.405.

(e) *Outcomes of the earnings premium measure.*(1) A program passes the earnings premium measure if the median annual earnings of the students who completed the program exceed the earnings threshold.

(2) A program fails the earnings premium measure if the median annual earnings of the students who completed the program are equal to or less than the earnings threshold.

§ 668.403 Calculating D/E rates.

(a) *General.* Except as provided under paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a program as follows:

(1) Discretionary debt-to-earnings rate = annual loan payment/(the median annual earnings − (1.5 × Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the most recent calendar year for which annual earnings are obtained under paragraph (c) of this section.

(2) Annual debt-to-earnings rate = annual loan payment/the median annual earnings.

(b) *Annual loan payment.* The Secretary calculates the annual loan payment for a program by—

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d) of this section or the total amount for tuition and fees and books, equipment, and supplies for each student, less the amount of institutional grant or scholarship funds provided to that student;

(ii) Removing, if applicable, the appropriate number of largest loan debts as described in § 668.405(d)(2); and

(iii) Calculating the median of the remaining amounts;

(2) Amortizing the median loan debt—

(i)(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for any other program; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three consecutive award years, ending in the final year of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three consecutive award years, ending in the final year of the cohort period, for graduate certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six consecutive award years, ending in the final year of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six consecutive award years, ending in the final year of the cohort period, for doctoral programs and first professional degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

(c) *Annual earnings.*(1) The Secretary obtains from a Federal agency with earnings data, under § 668.405, the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the median annual earnings to calculate the D/E rates.

(d) *Loan debt and assessed charges.* (1) In determining the loan debt for a student, the Secretary includes—

(i) The amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments except for those related to false certification, borrower defense discharges, or debt relief initiated by the Secretary as a result of a national emergency) for enrollment in the program, excluding Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants;

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that are required to be reported by the institution under § 668.408; and

(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any program attended at the institution that the student is obligated to repay after completing the program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term ''private education loan'' in 34 CFR 601.2;

(2) The Secretary attributes all the loan debt incurred by the student for enrollment in any—

(i) Undergraduate program at the institution to the highest credentialed undergraduate program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(ii) Graduate program at the institution to the highest credentialed graduate program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(3) The Secretary excludes any loan debt incurred by the student for enrollment in any program at any other institution. However, the Secretary may include loan debt incurred by the student for enrollment in programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions.* The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(f) *D/E rates not issued.* The Secretary does not issue D/E rates for a program under § 668.406 if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year or four-year cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (c) of this section.

§ 668.404 Calculating earnings premium measure.

(a) *General.* Except as provided under paragraph (d) of this section, for each award year, the Secretary calculates the earnings premium measure for a program by determining whether the median annual earnings of the title IV, HEA recipients who completed the program exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold.* (1) The Secretary obtains from a Federal agency with earnings data, under § 668.405, the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of students with a high school diploma or GED using data from the Census Bureau to calculate the earnings threshold described in § 668.2.

(3) The Secretary determines the earnings thresholds and publishes the thresholds annually through a notice in the **Federal Register**.

(c) *Exclusions.* The Secretary excludes a student from the earnings premium measure calculation if the Secretary determines that—

(1) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full-time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (b)(1) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(d) *Earnings premium measures not issued.* The Secretary does not issue the earnings premium measure for a program under § 668.406 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program during the two-year or four-year cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (b) of this section.

§ 668.405 Process for obtaining data and calculating D/E rates and earnings premium measure.

(a) *Administrative data.* In calculating the D/E rates and earnings premium measure for a program, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) *Process overview.* The Secretary uses the administrative data to—

(1) Compile a list of students who completed each program during the cohort period. The Secretary—

(i) Removes from those lists students who are excluded under §§ 668.403(e) or 668.404(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information about the students on the list, as provided in paragraph (a) of this section;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the D/E rates and the earnings premium measure and provide them to the institution.

(c) *Obtaining earnings data.* For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary—

(1) The median annual earnings of the students on the list whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that the Federal agency with earnings data could not match.

(d) *Calculating D/E rates and earnings premium measure.* (1) If the Federal agency with earnings data includes reports from records of earnings on at least 30 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates and earnings premium measure for each program.

(2) If the Federal agency with earnings data reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt for D/E rates the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

§ 668.406 Determination of the D/E rates and earnings premium measure.

(a) *Notice of determination.* For each award year for which the Secretary calculates D/E rates and the earnings premium measure for a program, the Secretary issues a notice of determination.

(b) The notice of determination informs the institution of the following:

(1) The D/E rates for each program as determined under § 668.403.

(2) The earnings premium measure for each program as determined under § 668.404.

(3) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(4) For non-GE programs, whether the student acknowledgement is required under § 668.407.

(5) For GE programs, whether the institution is required to provide the student warning under § 668.605.

(6) For GE programs, whether the program could become ineligible under subpart S of this part based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the program.

§ 668.407 Student disclosure acknowledgments.

(a) *Events requiring an acknowledgment from students.*

(1) *Eligible non-GE programs.* The student must provide an acknowledgment with respect to an eligible non-GE program in the manner specified in this section for any year for which the Secretary notifies an institution that the eligible non-GE program has failed the D/E rates for the year in which the D/E rates were most recently calculated by the Department.

(2) *GE Programs.* Warnings and acknowledgments with respect to GE programs are required under the conditions and in the manner specified in § 668.605.

(b) *Content and mechanism of acknowledgment.*

(1) The student must acknowledge having seen the information about the program provided through the disclosure website established and maintained by the Secretary described in § 668.43(d).

(2) The Department will administer and collect the acknowledgment through the disclosure website established and maintained by the Secretary described in § 668.43(d).

(c) An institution may not disburse title IV, HEA funds to the student until the student provides the acknowledgment required in paragraph (a)(1) of this section.

(d) The acknowledgment required in paragraph (a)(1) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as evidence against a student's claim if applying for a loan discharge.

§ 668.408 Reporting requirements.

(a) *General.* In accordance with procedures established by the Secretary, an institution must report to the Department—

(1) For each GE program and eligible non-GE program—

(i) The name, CIP code, credential level, and length of the program;

(ii) Whether the program is programmatically accredited and, if so, the name of the accrediting agency;

(iii) Whether the program meets licensure requirements or prepares students to sit for a licensure examination in a particular occupation for each State in the institution's metropolitan statistical area;

(iv) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds; and

(v) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in the definition of ''cohort period'' under § 668.2.

(2) For each student—

(i) Information needed to identify the student and the institution;

(ii) The date the student initially enrolled in the program;

(iii) The student's attendance dates and attendance status (*e.g.,* enrolled, withdrawn, or completed) in the program during the award year; and

(iv) The student's enrollment status (*e.g.,* full time, three quarter time, half time, less than half time) as of the first day of the student's enrollment in the program;

(v) The student's total annual cost of attendance;

(vi) The total tuition and fees assessed to the student for the award year;

(vii) The student's residency tuition status by State or district;

(viii) The student's total annual allowance for books, supplies, and equipment from their cost of attendance under HEA section 472;

(ix) The student's total annual allowance for housing and food from their cost of attendance under HEA section 472;

(x) The amount of institutional grants and scholarships disbursed to the student;

(xi) The amount of other State, Tribal, or private grants disbursed to the student; and

(xii) The amount of any private education loans disbursed, including private education loans made by the institution;

(3) If the student completed or withdrew from the program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.403(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.403(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses; and

(vi) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program; and

(4) As described in a notice published by the Secretary in the **Federal Register**, any other information the Secretary requires the institution to report.

(b)(1) *Reporting deadlines.* Except as provided under paragraph (c) of this section, an institution must report the information required under paragraph (a) of this section no later than—

(i) For programs other than medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;

(ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect, for the second through eighth award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the **Federal Register**.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(c) *Transitional reporting period and metrics.*

(1) For the initial award year for which D/E rates and the earnings premium are calculated under this part, institutions may opt to report the information required under paragraph (a) of this section for its eligible programs that are not GE programs either—

(i) For the time periods described in paragraph (b)(1)(i) and (ii) of this section; or

(ii) For only the two most recently completed award years.

(2) If an institution provides transitional reporting under paragraph (c)(1)(ii) of this section, the Department will calculate transitional D/E rates and earnings premium measures based on the period reported.

§ 668.409 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

■ 22. Add subpart S to part 668 to read as follows:

Subpart S—Gainful Employment (GE)

Sec.

Subpart S—Gainful Employment

§ 668.601 Gainful employment (GE) scope and purpose.

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation and establishes rules and procedures under which the Secretary determines that the program is eligible for title IV, HEA program funds.

§ 668.602 Gainful employment criteria.

(a) A GE program provides training that prepares students for gainful employment in a recognized occupation if the program—

(1) Satisfies the applicable certification requirements in § 668.604;

(2) Is not a failing program under the D/E rates measure in § 668.402 in two out of any three consecutive award years for which the program's D/E rates are calculated; and

(3) Is not a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated.

(b) If the Secretary does not calculate or issue D/E rates for a program for an award year, the program receives no result under the D/E rates for that award year and remains in the same status under the D/E rates as the previous award year.

(c) If the Secretary does not calculate D/E rates for the program for four or more consecutive award years, the Secretary disregards the program's D/E rates for any award year prior to the four-year period in determining the program's eligibility.

(d) If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year.

(e) If the Secretary does not calculate the earnings premium measure for the program for four or more consecutive award years, the Secretary disregards the program's earnings premium for any award year prior to the four-year period in determining the program's eligibility.

§ 668.603 Ineligible GE programs.

(a) *Ineligible programs.* If a GE program is a failing program under the D/E rates measure in § 668.402 in two out of any three consecutive award years for which the program's D/E rates are calculated, or the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated, the program becomes ineligible and its participation in the title IV, HEA programs ends upon the earliest of—

(1) The issuance of a new Eligibility and Certification Approval Report that does not include that program;

(2) The completion of a termination action of program eligibility, if an action is initiated under subpart G of this part; or

(3) A revocation of program eligibility, if the institution is provisionally certified.

(b) *Basis for appeal.* If the Secretary initiates an action under paragraph (a)(2) of this section, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the program's D/E rates under § 668.403 or the earnings premium measure under § 668.404. Institutions may not dispute a program's ineligibility based upon its D/E rates or the earnings premium measure except as described in this paragraph (b).

(c) *Restrictions*—(1) *Ineligible program.* Except as provided in § 668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the eligibility of a failing GE program that it discontinued voluntarily either before or after D/E rates or the earnings premium measure are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates or the earnings premium measure, until three years following the earlier of the date the program loses eligibility under paragraph (a) of this section or the date the institution voluntarily discontinued the failing program.

(3) *Restoring eligibility.* An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.604(c).

§ 668.604 Certification requirements for GE programs.

(a) *Transitional certification for existing programs.* (1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under § 668.14.

(2) If an institution makes the certification in its program participation agreement pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) *Program participation agreement certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.

(c) *Establishing eligibility and disbursing funds.* (1) An institution establishes a GE program's eligibility for title IV, HEA program funds by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or became ineligible as described in § 668.603(c), that was subject to the three-year loss of eligibility under § 668.603(c), until that three-year period expires.

(d) *GE program eligibility certifications.* An institution certifies for each eligible GE program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that such program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

§ 668.605 Student warnings and acknowledgments.

(a) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the GE program could become ineligible under this subpart based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the GE program.

(b) *Subsequent warning.* If a student or prospective student receives a warning under paragraph (a) of this section with respect to a GE program, but does not seek to enroll until more than 12 months after receiving the warning, the institution must again provide the warning to the student or prospective student, unless, since providing the initial warning, the program has passed both the D/E rates and earnings premium measures for the two most recent consecutive award years in which the metrics were calculated for the program.

(c) *Content of warning.* The institution must provide in the warning—

(1) A warning, as specified by the Secretary in a notice published in the **Federal Register**, that—

(i) The program has not passed standards established by the U.S. Department of Education based on the amounts students borrow for enrollment in the program and their reported earnings, as applicable; and

(ii) The program could lose access to Federal grants and loans based on the next calculated program metrics;

(2) The relevant information to access the disclosure website maintained by the Secretary described in § 668.43(d);

(3) A statement that the student must acknowledge having seen the warning through the disclosure website maintained by the Secretary described in § 668.43(d) before the institution may disburse any title IV, HEA funds;

(4) A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;

(5) An indication of whether, in the event that the program loses eligibility for title IV, HEA program funds, the institution will—

(i) Continue to provide instruction in the program to allow students to complete the program; and

(ii) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(6) An explanation of whether, in the event that the program loses eligibility for title IV, HEA program funds, the students could transfer credits earned in the program to another institution in accordance with an established articulation agreement or teach-out plan or agreement.

(d) *Alternative languages.* In addition to providing the English-language warning, the institution must also provide translations of the English-language student warning for those students and prospective students who have limited proficiency in English.

(e) *Delivery to enrolled students.* An institution must provide the warning required under this section in writing, by hand delivery, mail, or electronic means, to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.406 and maintain documentation of its efforts to provide that warning. The warning must be the only substantive content contained in these written communications.

(f) *Delivery to prospective students.* (1) An institution must provide the warning as required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(i) Hand-delivering the warning as a separate document to the prospective student or third party individually, or as part of a group presentation;

(ii) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(iii) Providing the warning orally to the student or third party if the contact is by telephone.

(2) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the institution delivers the warning as described in paragraph (f) of this section.

(g) *Restriction on disbursement.* An institution may not disburse title IV, HEA funds to the student until the student completes the acknowledgment described in paragraph (c)(3) of this section, as administered and collected through the disclosure website maintained by the Secretary described in § 668.43(d).

(h) *Disclaimer.* The provision of a student warning or the acknowledgment described in paragraph (c)(3) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as evidence against a student's claim if applying for a loan discharge.

§ 668.606 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

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Part III

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Dishwashers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0039]

RIN 1904–AE32

Energy Conservation Program: Energy Conservation Standards for Dishwashers

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including dishwashers. EPCA also requires the U.S. Department of Energy (''DOE'' or ''the Department'') to periodically determine whether more-stringent standards would be technologically feasible and economically justified and would result in significant energy savings. In this notice of proposed rulemaking (''NOPR''), DOE proposes amended energy conservation standards for dishwashers, and requests 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 18, 2023.

Meeting: DOE will hold a public meeting via webinar on June 8, 2023, from 1 p.m. to 4 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 20, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2019–BT–STD–0039. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0039, by any of the following methods. Individuals who are deaf or hard of hearing, or who have speech and other communication disabilities may use a relay service to reach the telephone numbers in this section and farther below in this document. To learn more about how to make an accessible telephone call, visit the web page for Federal Communications Commission at *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

(1) *Email: DW2019STD0039@ee.doe.gov.* Include the docket number EERE–2019–BT–STD–0039 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?D=EERE-2019-BT-STD-0039.* 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:

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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:

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I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include dishwashers, the subject of this document. (42 U.S.C. 6292(a)(6))

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)) Not later than 3 years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for dishwashers. The proposed standards shall not exceed the estimated annual energy use, as expressed in kilowatt hours per year (''kWh/year''), and water consumption, as expressed in gallons per cycle (''gal/cycle'') shown in Table I.1. These proposed standards, if adopted, would apply to all dishwashers listed in Table I.1 manufactured in, or imported into, the United States starting on the date 3 years after the publication of the final rule for this rulemaking.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR DISHWASHERS

Product class	Maximum estimated annual energy use * (kWh/year)	Maximum per-cycle water consumption (gal/cycle)
PC 1: Standard-Size Dishwasher	223	3.3
PC 2: Compact-Size Dishwasher	174	3.1

* Using appendix C2.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of dishwashers, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of dishwashers, which is estimated to be 15.2 years (see section IV.F.6 of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF DISHWASHERS

Product class	Average LCC savings (2021$)	Simple payback period (years)
Standard-Size	$17	2.4
Compact-Size	30	0.0

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[4]

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 8.5 percent, DOE estimates that the INPV for manufacturers of dishwashers in the case without amended standards is $713.6 million. Under the proposed standards, the change in INPV is estimated to range from −$134.9 million to −$89.5 million, which represents a change of −18.9 percent to −12.5 percent. To bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of approximately $125.6 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs

DOE's analyses indicate that the proposed energy conservation standards for dishwashers would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for dishwashers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056) amount to 0.31 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 2.7 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for dishwashers ranges from $1.11 billion (at a 7-percent discount rate) to $2.77 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 dishwashers purchased in 2027–2056.

In addition, the proposed standards for dishwashers 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 12.54 million metric tons (''Mt'')[6] of carbon dioxide (''CO_2''), 3.38 thousand tons of sulfur dioxide (''SO_2''), 25.15 thousand tons of nitrogen oxides (''NO_X''), 112.88 thousand tons of methane (''CH_4''), 0.09 thousand tons of nitrous oxide (''N_2O''), and 0.02 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of GHG (''SC–GHG'').[8] DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[9] The derivation of these values is discussed

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.8 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.F.9 of this document).

[4] All monetary values in this document are expressed in 2021 dollars.

[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (''*AEO 2022*''). *AEO 2022* 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 *AEO 2022* assumptions that effect air pollutant emissions.

[8] 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

[9] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021 (''February 2021 SC–GHG TSD''). *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.60 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four 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 $0.35 billion using a 7-percent discount rate, and $0.94 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.3 summarizes the monetized benefits and costs expected to result from the proposed standards for dishwashers. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR DISHWASHERS

[TSL 3]

	Billion $2021
3% discount rate	
Consumer Operating Cost Savings	2.92
Climate Benefits *	0.60
Health Benefits **	0.94
Total Benefits †	4.47
Consumer Incremental Product Costs ‡	0.15
Consumer Net Benefits	2.77
Total Net Benefits	4.32
7% discount rate	
Consumer Operating Cost Savings	1.19
Climate Benefits * (3% discount rate)	0.60
Health Benefits **	0.35
Total Benefits †	2.14
Consumer Incremental Product Costs ‡	0.08
Consumer Net Benefits	1.11
Total Net Benefits	2.06

Note: This table presents the costs and benefits associated with product name shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the social cost of carbon ($SC–CO_2$), methane ($SC–CH_4$), and nitrous oxide ($SC–N_2O$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) (see section IV.L of this document). Together these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate. 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 Interagency Working Group on the Social Cost of Greenhouse Gases (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 savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of dishwashers 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 dishwashers shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.B.8 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The

[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.

[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.

results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $8.6 million per year in increased product costs, while the estimated annual benefits are $125.8 million in reduced product operating costs, $34.6 million in climate benefits, and $37.0 million in health benefits. In this case, the net benefit would amount to $188.8 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $8.5 million per year in increased product costs, while the estimated annual benefits are $167.8 million in reduced operating costs, $34.6 million in climate benefits, and $54.3 million in health benefits. In this case, the net benefit would amount to $248.1 million per year.

TABLE I.4—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR DISHWASHERS

[TSL 3]

	Million 2021$/year		
	Primary estimate	Low-Net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	167.8	166.8	169.5
Climate Benefits *	34.6	33.8	35.3
Health Benefits **	54.3	53.1	55.4
Total Benefits †	256.6	253.7	260.2
Consumer Incremental Product Costs ‡	8.5	9.8	8.2
Net Benefits	248.1	243.8	251.9
7% discount rate			
Consumer Operating Cost Savings	125.8	125.0	127.0
Climate Benefits * (3% discount rate)	34.6	33.8	35.3
Health Benefits *	37.0	36.3	37.7
Total Benefits †	197.3	195.1	199.9
Consumer Incremental Product Costs ‡	8.6	9.7	8.3
Net Benefits	188.8	185.3	191.6

Note: This table presents the costs and benefits associated with dishwashers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.1 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four 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 Interagency Working Group on the Social Cost of Greenhouse Gases (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 standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from NO_X and SO_2 reduction, and a 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the proposed standards for dishwashers is $8.6 million per year in increased dishwasher costs, while the estimated annual benefits are $125.8 million in reduced equipment operating costs, $34.6 million in climate benefits, and $37.0 million in health benefits. The net benefit amounts to $188.8 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 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.

[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).

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the proposed standards are projected to result in estimated national energy savings of 0.31 quads full-fuel-cycle (''FFC''), the equivalent of the primary annual energy use of 3.3 million homes. The NPV of consumer benefit for these projected energy savings is $1.11 billion using a discount rate of 7 percent, and $2.77 billion using a discount rate of 3 percent. The cumulative emissions reductions associated with these energy savings are 12.56 Mt of CO_2, 3.39 thousand tons of SO_2, 25.20 thousand tons of NO_X, 0.02 tons of Hg, 113.10 thousand tons of CH_4, and 0.09 thousand tons of N_2O. The estimated monetary value of the climate benefit from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) is $0.6 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions is $0.35 billion using a 7-percent discount rate and $0.94 billion using a 3-percent discount rate. As such, DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).[13] A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').

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 benefits of the more-stringent energy efficiency levels would outweigh the projected burdens.

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 dishwashers.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include dishwashers, the subject of this document. (42 U.S.C. 6292(a)(6)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(1) and 10(A)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (10)(B)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than 3 years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for dishwashers appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix C1 (''appendix C1'') and appendix C2 (''appendix C2'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including dishwashers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on 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;

[13] See section III.D.2 of this document for further discussion of how DOE determines whether energy savings are ''significant'' within the context of the statute.

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

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

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

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

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

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

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

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for dishwashers address standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards that it may adopt.

B. Background

1. Current Standards

In a direct final rule published on May 30, 2012 (''May 2012 Direct Final Rule''), DOE prescribed the current energy conservation standards for dishwashers manufactured on or after May 30, 2013. 77 FR 31918. In a final determination published on December 13, 2016 (''December 2016 Final Determination''), DOE concluded that amended energy conservation standards would not be economically justified at any level above the standards established in the May 2012 Direct Final Rule, and therefore determined not to amend the standards. 81 FR 90072. The current energy and water conservation standards are set forth in DOE's regulations at 10 CFR part 430, § 430.32(f), and are repeated in Table II.1. The current applicable DOE test procedure for dishwashers appears at appendix C1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR DISHWASHERS

Product class	Maximum estimated annual energy use * (kWh/year)	Maximum per-cycle water consumption (gal/cycle)
Standard-Size Dishwasher	307	5.0
Compact-Size Dishwasher	222	3.5

* Using appendix C1.

The Association of Home Appliance Manufacturers (''AHAM'') standard AHAM DW–1–2020 is also referenced in the amendatory text of this document but has already been approved for § 430.32. No changes are proposed.

2. History of Standards Rulemaking for Dishwashers

The current energy conservation standards for dishwashers were submitted to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups on July 30, 2010. This collective set of comments, titled ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''Joint Petition''),[14] recommended specific energy conservation standards for dishwashers that, in the commenters' view, would satisfy the EPCA requirements. (42 U.S.C. 6295(o)) DOE analyzed the benefits and burdens of multiple standard levels for residential dishwashers, including a standard level that corresponded to the recommended levels in the Joint Petition. 77 FR 31945, 31945–6. In the May 2012 Direct Final Rule, DOE established energy conservation standards for dishwashers manufactured on or after May 30, 2013, consistent with the levels suggested in the Joint Petition. 77 FR 31918.

In the December 2016 Final Determination, DOE concluded that amended energy conservation standards would not be economically justified at that time at any level above the standards established in the May 2012 Direct Final Rule, and therefore determined not to amend the standards. 81 FR 90072.

[14] DOE Docket No. EERE–2011–BT–STD–0060–0001.

On March 21, 2018, the Competitive Enterprise Institute (''CEI'') submitted a petition for rulemaking requesting that DOE establish a new product class for dishwashers with a cycle time of less than one hour. DOE granted the petition and proposed a new product class for dishwashers with a ''normal'' cycle time of 60 minutes or less. 84 FR 33869 (July 16, 2019). On October 30, 2020, DOE published a final rule establishing a separate product class for standard-size dishwashers with a cycle time for the ''normal'' cycle of 60 minutes or less from washing through drying (''short cycle dishwashers''). 85 FR 68723 (''October 2020 Final Rule'').

Subsequently, in a final rule published on January 19, 2022, DOE revoked the final rule that established the new product class for dishwashers as it was improperly promulgated. 87 FR 2673.

EPCA requires that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. In an early assessment request for information published on October 14, 2020 (''October 2020 RFI''), DOE initiated the current rulemaking with an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for dishwashers. 85 FR 64981.

Subsequently, on January 24, 2022, DOE published a notification of a webinar and availability of preliminary technical support document (''January 2022 Preliminary Analysis''). 87 FR 3450. In that notification, DOE sought comment on the analytical framework, models, and tools that DOE used to evaluate potential standards for dishwashers, the results of preliminary analyses performed, and the potential energy and water conservation standard levels derived from these analyses, which DOE presented in the accompanying preliminary TSD (''January 2022 Preliminary TSD'').[15] *Id.*

Prior to the publication of the January 2022 Preliminary Analysis, DOE published proposed amendments to the dishwashers test procedure at appendix C1 and proposed a new appendix C2 in a test procedure NOPR published on December 22, 2021 (''December 2021 TP NOPR''). 86 FR 72738. On January 18, 2023, DOE published the final test procedure rulemaking (''January 2023 TP Final Rule'') amending appendix C1 and establishing a new appendix C2. 88 FR 3234.The new appendix C2 specifies updated annual cycles and low-power mode hours, both of which are used to calculate the estimated annual energy use (''EAEU'') metric, and introduces a cleaning performance threshold requirement.

DOE held a public meeting on February 22, 2022 (''January 2022 Preliminary Analysis webinar''), to solicit feedback from stakeholders concerning the January 2022 Preliminary Analysis, and received comments in response from the interested parties listed in Table II.2.

TABLE II.2—JANUARY 2022 PRELIMINARY ANALYSIS WRITTEN COMMENTS FOR DISHWASHERS

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Westview and Global Guideway	Westview and Global Guideway.	17	Individual.
Whirlpool Corporation	Whirlpool	21	Manufacturer.
Samsung Electronics America, Inc	Samsung	22	Manufacturer.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, Natural Resources Defense Council.	Joint Commenters	23	Efficiency Advocates.
Northwest Energy Efficiency Alliance	NEEA	24	Efficiency Advocates.
GE Appliances, a Haier Company	GEA	25	Manufacturer.
Association of Home Appliance Manufacturers	AHAM	[16] 26, 31	Trade Association.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, the California Investor Owned Utilities).	CA IOUs	27	Utilities.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[17] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the February 22, 2022, public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

C. Deviation From Appendix A

The timing of DOE's test procedures and energy conservation standards rulemakings are conducted in accordance with DOE's procedures at appendix A to subpart C of part 430, *Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment* (''appendix A''). Section 6(f)(2) of appendix A provides that the length of the public comment period for

[15] January 2022 Dishwashers Energy Conservation Standards Preliminary Technical Support Document. Available online at *www.regulations.gov/document/EERE-2019-BT-STD-0039-0015.*

[16] AHAM's supplemental comment (No. 31) was received 161 days after the comment submission deadline. DOE generally will not consider late filed comments, but may exercise its discretion to do so where necessary and appropriate. In this case, DOE is considering AHAM's comment because its tardiness has not disrupted DOE's consideration of this matter and because the comment regards a subject important to this matter.

[17] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for dishwashers. (Docket No. EERE–2019–BT–STD–0039, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

a notice of proposed rulemaking to amend an energy conservation standard will be at least 75 days. In accordance with section 3(a) of appendix A, DOE notes that it is deviating from the provision in appendix A regarding the pre- stages for an energy conservation standards rulemaking. DOE faces an overdue statutory deadline for this rulemaking and, furthermore, the analytical methods used for this NOPR are similar to those used in previous rulemaking notices. Consequently, DOE has determined it is necessary and appropriate to provide a 60-day comment period, which the Department has determined provides sufficient time for interested parties to review the NOPR and develop comments and for DOE to complete its analyses prior to the publication of the final rule by June 30, 2024, as required by a consent decree.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information submitted by stakeholders. 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.

AHAM noted that DOE's comment period on the January 2022 Preliminary Analysis overlapped with the December 2021 TP NOPR comment period by 30 days. (AHAM, No. 26 at p. 28) AHAM commented that DOE should have received and considered stakeholder comments on the December 2021 TP NOPR, which proposed a significant change (*i.e.,* a cleaning index threshold as a condition for a valid test cycle), before proceeding with the energy conservation standard itself, including the January 2022 Preliminary Analysis. (*Id.*) AHAM commented that it supported DOE's interest in moving rulemakings forward, but to provide stakeholders with a real opportunity to evaluate proposals, DOE should have released the test procedure proposal for comment before conducting its preliminary analysis. (AHAM, No. 26 at p. 28)

AHAM commented that, regardless of the desire to rectify missed deadlines, DOE must ensure that its process allows early stakeholder engagement and that it meets other statutory criteria, such as ensuring that the standard is technically feasible and economically justified. (AHAM, No. 26 at pp. 28–29) AHAM commented that the process DOE had chosen for the dishwashers test procedure and standards rulemakings significantly undercuts commenters' ability to provide critical, early feedback to DOE on both the proposed test procedure and the preliminary analysis. (AHAM, No. 26 at p. 28) AHAM commented that DOE's proposed dishwasher test procedure amendments would alter measured efficiency in many cases, that DOE did not fully analyze the impact of the December 2021 TP NOPR amendments on the standards rulemaking, and that DOE's process does not allow commenters sufficient time to analyze the implications. (*Id.*)

DOE notes that the timing of the test procedure and energy conservation standards rulemakings have been conducted in accordance with DOE's procedures at appendix A. The procedures at appendix A inherently recognize a certain amount of overlap between test procedure and energy conservation standards rulemakings. In particular, appendix A specifies that new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for a NOPR proposing new or amended energy conservation standards or a notice of proposed determination that standards do not need to be amended. Section 8(d)(1) of appendix A. Inherent to this requirement is a recognition that the earlier stages of the test procedure rulemaking (*i.e.,* the test procedure NOPR stage) would be conducted concurrently with the pre-NOPR stages of the energy conservation standards rulemaking (*i.e.,* the preliminary analysis stage). In other words, the implication of the timing established by appendix A is that a test procedure NOPR may provide the basis for a standards preliminary analysis; while a test procedure final rule provides the basis for a standards NOPR. DOE issued the January 2023 TP Final Rule on December 16, 2022. The comment period for this standards NOPR will end more than 180 days after the issuance of the January 2023 TP Final Rule, in accordance with the requirements of appendix A.

As acknowledged by AHAM, DOE is conducting this rulemaking in fulfillment of its statutory obligations under EPCA. Furthermore, DOE expects to publicly post the intended final rule for this rulemaking by June 30, 2024, in fulfillment of the terms of a consent decree,[18] which necessitates timely issuance of this NOPR. DOE recognizes and appreciates the information and data provided by stakeholders in response to the January 2022 Preliminary Analysis. As discussed throughout this NOPR, DOE has incorporated data and other information received during the prior rulemaking stages into the analyses conducted for this NOPR.

AHAM commented that DOE's test procedure proposal and preliminary analysis are missing key data and the data which are included are not transparent, which fails to meet EPCA, the Administrative Procedure Act, and the Data Quality Act requirements. (AHAM, No. 26 at p. 28)

DOE understands AHAM's above comment to be discussing the cleaning performance requirement in the January 2023 TP Final Rule. As noted in the January 2023 TP Final Rule, DOE discussed in the December 2021 TP NOPR its justification for including a cleaning performance measurement and establishing a minimum cleaning index threshold to define what constitutes completely washing a full load of normally soiled dishes. 88 FR 3234. The December 2021 TP NOPR presented details of a rigorous analysis performed by DOE, building upon a comprehensive investigation and analysis of dishwasher cleaning performance conducted by DOE over the course of the development of the U.S. Environmental Protection Agency's (''EPA's'') ENERGY STAR Cleaning Performance Test Method[19] and previous dishwasher energy conservation standards rulemakings, and using the best available data of which it was aware at the time of the December 2021 TP NOPR to tentatively determine the specific cleaning index threshold that aligns with consumer expectations for completely washing a

[18] On October 30, 2020, Natural Resources Defense Council, Center for Biological Diversity, Consumer Federation of America, Massachusetts Union of Public Housing, and Sierra Club filed a lawsuit against DOE and the Secretary alleging that DOE failed to complete rulemakings by statutory deadlines for 25 consumer products and commercial equipment, including dishwashers. *See Natural Resources Defense Council, et al.* v. *Granholm, et al.,* No. 1:20–cv–09127 (S.D.N.Y.) On November 9, 2020, the States of New York, California, Colorado, Connecticut, Illinois, Maine, Maryland, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the People of the State of Michigan, the District of Columbia, and the City of New York filed a similar complaint, amended on January 29, 2021 to include the Commonwealth of Pennsylvania and the States of New Mexico and Nevada. *See State of New York, et al.* v. *Granholm, et al.,* No. 1:20–cv–09362 (S.D.N.Y.) Under the terms of a negotiated consent decree to settle these lawsuits, entered on September 20, 2022, DOE is required, in part, to publicly post the intended final rule for dishwasher standards by June 30, 2024.

[19] Available at *www.energystar.gov/products/spec/residential_dishwashers_specification_pd.*

full load of normally soiled dishes. 86 FR 72738, 72756–72759. DOE reiterated its results and analysis, and included additional resources, when it presented the final cleaning index threshold in newly established appendix C2 in the January 2023 TP Final Rule. 88 FR 3234. Similarly, in the January 2022 Preliminary TSD, DOE presented test results pertaining to energy use, water use, and cleaning performance by soil level (*i.e.,* heavy, medium, or light soil load) and efficiency level as determined by the rated energy and water use. *See* chapter 5, section 5.5.1 of the January 2022 Preliminary TSD. These aggregated data informed DOE's preliminary analysis and formed the basis for the efficiency levels presented in the January 2022 Preliminary TSD. Additionally, DOE released test data, including model name and numbers, to individual manufacturers that requested this information for their own models that were tested. These data were released under a non-disclosure agreement (''NDA'').

AHAM commented that dishwashers are an energy efficiency success story and that AHAM, DOE, EPA, and other interested parties should work to promote dishwasher ownership and proper use as the next step towards energy and water savings. (AHAM, No. 26 at pp. 1–2) AHAM suggested that non-regulatory options, such as government-industry partnerships, can significantly contribute to achieving the President's climate goals via non-regulatory programs to promote ownership and effective use of dishwashers, especially for low-income consumers. (AHAM, No. 26 at pp. 2–3) AHAM commented that DOE should amend standards to EL 1, but without the cleaning performance metric that was proposed in the December 2021 TP NOPR, and focus any additional resources on developing non-regulatory programs that will increase dishwasher ownership and proper use of dishwashers. (AHAM, No. 26 at pp. 3–4) AHAM commented that increasing dishwasher ownership and proper use of dishwashers has the potential to drive significant energy and water savings compared to savings attributable to amended standards. (AHAM, No. 26 at p. 16) AHAM commented that from an environmental perspective, the preferred consumer behavior from most preferred to least preferred is: no pre-rinsing and running full or partial loads in a dishwasher; pre-rinsing and running full or partial loads in a dishwasher; and, complete hand washing. AHAM commented that hand washing and pre-rinsing consumes substantially more water than running a dishwasher with partial loads even twice as often (*i.e.,* every day rather than an average of 185 loads per year). (*Id.*)

Whirlpool supported AHAM's recommendation to explore non-regulatory options to promote broader dishwasher ownership and optimal usage. (Whirlpool, No. 21 at p. 2) Whirlpool commented that DOE's efforts to further improve energy and water savings should focus on non-regulatory options. (Whirlpool, No. 21 at p. 6)

GEA also supported AHAM's comment proposing a partnership between DOE, EPA, industry, and energy efficiency advocates to encourage non-regulatory options to further improve energy and water savings. (GEA, No. 25 at p. 2)

DOE acknowledges that non-regulatory options may exist to promote dishwasher ownership and proper use to further push the potential for energy and water savings. However, under EPCA, DOE is statutorily required to conduct energy conservation standards rulemaking for dishwashers to determine whether amending the current standards would achieve the maximum improvement in energy efficiency and are technologically feasible and economically justified.[20] (42 U.S.C. 6295(g), (m), and (o)) Since DOE published the December 2016 Final Determination not to amend dishwasher standards, it has initiated this current process to evaluate whether amended standards are economically justified and technologically feasible, warranting a NOPR or a determination that standards for dishwashers do not need to be amended. As discussed throughout this document, unlike the 2016 Final Determination, DOE has preliminarily determined that amended standards are economically justified, technologically feasible, and would result in significant energy savings. The vast majority, 93 percent, of the market currently meets or exceeds the ENERGY STAR V. 6.0[21] level, which corresponds to EL 1 in this document, compared to only 62 percent of the market that met or exceeded that level[22] in the December 2016 Final Determination. Further, as discussed in section IV.C.2 of this document, the anticipated requirement to increase dishwasher efficiency from EL 1 to EL 2 is estimated to be a zero-cost improvement in control strategies. Accordingly, DOE is proposing amended energy conservation standards for dishwashers in this NOPR.

In response to results shown in the preliminary analysis, Whirlpool and GEA noted the estimates of consumers experiencing net costs of greater than 40 percent for both product classes analyzed beyond EL 1. (Whirlpool, No. 21 at p. 3; GEA, No. 25 at p. 2)

DOE updated its preliminary analysis for this NOPR. Between publication of the preliminary analysis and this NOPR some of the inputs into DOE's analysis have changed, greatly reducing the percentage of customers experiencing net costs. DOE uses the most currently available information at each stage of an energy conservation standards rulemaking. Updates in the NOPR analysis, compared to the preliminary analysis, include changes to the consumer sample, energy prices, discount rate, product costs at each efficiency level and market shares for the product classes (see sections IV.D and IV.F.8 of this document), which in turn update the net costs experienced by consumers as estimated in the LCC analysis (see Table V.2 through Table V.5). DOE's proposed standards are based on the updated analysis, as described in section V of this document.

B. Scope of Coverage

This NOPR covers those consumer products that meet the definition of ''dishwasher'' as codified at 10 CFR 430.2.

Dishwasher means a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system. 10 CFR 430.2.

See section IV.A.1 of this document for discussion of the product classes analyzed in this NOPR.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for dishwashers are expressed in terms of EAEU, in kWh/year, and water consumption, in gal/cycle, as

[20] DOE conducts an energy conservation standard every 3 to 6 years depending on whether DOE issued a determination not to amend standards or DOE amended standards. (42 U.S.C. 6295(m)).

[21] ENERGY STAR Program Requirements. Product Specification for Residential Dishwashers. Eligibility Criteria. Version 6.0. Effective date: January 29, 2016.

[22] In the December 2016 Final Determination, EL 2 corresponded to the ENERGY STAR V. 6.0 level.

measured using appendix C1. (*See* 10 CFR 430.32(f).)

As discussed, on January 18, 2023, DOE published a final rule amending the dishwashers test procedure at appendix C1 and adopting a new test procedure at appendix C2. 88 FR 3234. The amendments to appendix C1 establish requirements for water hardness, relative humidity, and loading pattern; update requirements for ambient temperature, detergent dosage, and standby power measurement; and include testing approaches from published waivers for dishwashers. *Id.* The new appendix C2 additionally includes updated annual number of cycles and low-power mode hours for the calculation of energy consumption, as well as provisions for a minimum cleaning index threshold of 70 to validate the selected test cycle. *Id.* Cleaning index is calculated based on the number and size of particles remaining on each item of the test load at the completion of a dishwasher cycle as specified in AHAM DW–2–2020.[23] Items that do not have any soil particles are scored 0 (*i.e.,* completely clean). No single item in the test load can exceed a score of 9. Individual scores for each item in the test load are combined as a weighted average to calculate the per cycle cleaning index. A cleaning index of 100 indicates completely clean test load. In the final rule, DOE specified that the cleaning index is calculated by only scoring soil particles on all items in the test load and that spots, streaks, and rack contact marks on glassware are not included in the cleaning index calculation.[24] 88 FR 3234. The new appendix C2 will go into effect only at such time as compliance is required with any amended energy conservation standards. Accordingly, DOE used appendix C2 as finalized in the January 2023 TP Final Rule as the basis for the analysis in this NOPR. Specifically, in this NOPR, DOE's EAEU analysis is based on 184 cycles/year as specified in appendix C2.

In response to the January 2022 Preliminary Analysis, Whirlpool commented that DOE had not shown that any cleaning index score correlates strongly to high consumer satisfaction or prevents consumers from performing more energy- and water-intensive behaviors. Whirlpool further cited its comments on the December 2021 TP NOPR regarding the relationship between the cleaning index as calculated using AHAM DW–2–2020 and real world consumer satisfaction.[25] (Whirlpool, No. 21 at p. 4) GEA stated that DOE lacked data on the reproducibility and repeatability of the proposed cleaning performance metric, as well as data that indicate the cleaning index threshold is relevant to DOE's stated goal. (GEA, No. 25 at p. 2) GEA also stated that a requirement to test the most energy-intensive cycle as a result of failing DOE's cleaning metric is effectively a change to the standard. (*Id.*)

AHAM stated it had concerns with DOE's cleaning performance metric, claiming that (1) EPCA does not authorize a cleaning performance metric in the test procedure; (2) DOE had failed to support its proposal with data; and (3) the December 2021 TP NOPR proposal was fraught with technical challenges and uncertainty. (AHAM, No. 26 at p. 12)[26] AHAM further commented that DOE had not proven that the December 2021 TP NOPR proposal to include a minimum cleaning index threshold of 65 as a condition for a test cycle to be valid will protect product performance in the event of increased standards. (AHAM, No. 26 at p. 11) AHAM commented that DOE's data were not transparent and DOE provided only summary information in graphs, which did not allow commenters to fully analyze the data and understand the relationship between cleaning indices and energy and water usage. (AHAM, No. 26 at pp. 12, 29) AHAM requested that DOE provide its full data set to facilitate complete evaluation by commenters. AHAM noted that failure to provide this data would be inconsistent with the requirements under the Data Quality Act and other applicable statutory provisions. AHAM requested that, if DOE provides its full data, it do so in a format that permits public comment for at least 60 days on both the December 2021 TP NOPR and the January 2022 Preliminary Analysis. (AHAM, No. 26 at p. 14) AHAM requested that DOE provide its full test data by model via a notice of data availability or other appropriate regulatory tool. AHAM requested that the data include, at a minimum, for each soil level, the following information: machine energy (in watt-hours (''Wh'')), water energy (in Wh), power dry energy (in Wh), total cycle energy (in Wh), annual energy (in kWh), water use (in gal), per-cycle cleaning index, and water energy during rinse (in Wh). AHAM also requested DOE to share the model numbers because it would help AHAM and its members determine representativeness of the sample. (AHAH, No. 26 at pp. 29–30) AHAM commented that it could not support DOE's test procedure proposal to include a performance metric in the test procedure without DOE providing data and information to address the significant concerns AHAM raised in its comments on the December 2021 TP NOPR. (AHAM, No. 26 at p. 12) AHAM also commented that the impact of a test procedure amendment to include cleaning performance would be additional manufacturer cost and redesign to comply with future amended standards, and DOE's analysis should account for these costs. (AHAM, No. 26 at p. 29)

The CA IOUs stated their support for the adoption of a cleaning index threshold to ensure dishwashers adequately clean dishes per consumer expectations while improving energy and water efficiency. The CA IOUs commented that greater satisfaction in dishwasher performance will increase the use and adoption of more-efficient dishwashers, resulting in a virtuous cycle that leads to even more significant real-world savings due to a reduction in pre-washing and pre-rinsing. (CA IOUs, No. 27 at p. 4) Samsung stated that it supports the cleaning index threshold of 65 as proposed in the December 2021 TP NOPR to incentivize adequate cleaning efficiency. (Samsung, No. 22 at p. 3) Samsung provided further comment acknowledging variability in the cleaning performance test method, but that variability could be compensated by adjusting the minimum threshold level using the observed standard deviation. (Samsung, No. 22 at p. 4)

DOE has responded to all of these comments in the January 2023 TP Final Rule when establishing the cleaning index threshold of 70 as a condition for a valid test cycle in new appendix C2. The December 2021 TP NOPR, stakeholder comments, January 2023 TP Final Rule, and supporting material are available on the docket at *www.regulations.gov/docket/EERE-2016-BT-TP-0012.*

D. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening

[23] Household Electric Dishwashers. AHAM DW–2–2020. Copyright 2020.

[24] In the December 2021 TP NOPR, DOE proposed a cleaning index threshold of 65 calculated by scoring soil particles on all items as well as spots, streaks, and rack contact marks on glassware. In the January 2023 TP Final Rule, DOE noted that the specified cleaning index threshold of 70 is equivalent to the cleaning index threshold of 65 that was proposed in the December 2021 TP NOPR.

[25] This comment was addressed by DOE in the January 2023 TP Final Rule, as such, DOE is not responding to this comment here.

[26] DOE has addressed AHAM's bulleted comments in the January 2023 TP Final Rule.

analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or product that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for dishwashers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for dishwashers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this 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 dishwashers purchased in the 30-year period that begins in the year of compliance with the proposed standards (2027–2056).[27] The savings are measured over the entire lifetime of dishwashers purchased in the 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'') and national water savings (''NWS'') from potential amended or new standards for dishwashers. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. 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.[28] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or product. For more information on FFC energy savings, see section IV.H.2 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[29] 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. As discussed in section V.C of this document, DOE is proposing to adopt TSL 3, which would save an estimated 0.31 quads of energy (FFC) and 0.24 trillion gallons of water. DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this NOPR.

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

[27] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[28] 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).

[29] 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).

manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

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

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

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

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

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

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the 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 and Water Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy and Water Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and GHGs associated with energy production and use. As part of the analysis of the need for national energy and water conservation, DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of 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 other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking regarding dishwashers. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections. Additionally, this second spreadsheet calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket?D=EERE-2019-BT-STD-0039.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of dishwashers. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered products (*i.e.,* establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

DOE currently defines separate energy conservation standards for the following two product classes of dishwashers (10 CFR 430.32(f)):

(1) Standard-size dishwashers (capacity equal to or greater than eight place settings plus six serving pieces); and

(2) Compact-size dishwashers (capacity less than eight place settings plus six serving pieces).

For these two classes of dishwashers, DOE's current test procedure measures the energy consumption in terms of EAEU, in kWh/year, and water consumption, in gal/cycle (*see* 10 CFR 430.32(f)).

As part of its rulemaking process, DOE considers, among other things, whether changes to the current product classes are warranted under the criteria in 42 U.S.C. 6295(q). In surveying the dishwasher market, DOE determined that, in addition to a ''normal'' cycle, many dishwasher models offer a variety of other cycles, *e.g.,* delicate cycles, eco wash cycles, heavy soil cycles, pots and pans cycles, and quick or short cycles. In order to establish a separate product class for dishwasher models that offer any of these other cycles, DOE would have to determine that: (1) the other cycle is a performance-related feature which other products within such type (or class) do not have; and (2) such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)(B)) In making the latter determination, DOE considers such factors as the utility to the consumer of such a feature, and such other factors as the Department determines appropriate. *Id.*

With respect to the first criterion for establishing product classes, DOE has preliminarily determined that these other cycles may constitute performance-related features. For example, in 2020, DOE analyzed he average ''normal'' and ''quick'' cycle times for 31 dishwasher models. The average cycle time for a ''normal'' cycle was 131.1 minutes, while the average ''quick'' cycle time was 75.5 minutes.[30] DOE recognizes that ''quick'' cycle options, which are on average approximately an hour shorter than a ''normal'' cycle, allow consumers access to clean dishes in an expedited manner.

However, with respect to the second criterion for establishing product classes, DOE tentatively concludes that there is not a correlation between any of these additional cycles and energy and water use as measured by the DOE test procedure. In other words, DOE does not find a justification for setting a lower or higher standard for dishwasher models that offer any of these other cycles because only the ''normal'' cycle is tested pursuant to the DOE test procedure for compliance with the applicable standard. The current and proposed standards impose restrictions on energy or water use only when a dishwasher is operating in its ''normal'' cycle. Thus, there is no justification or need to establish separate product classes for dishwashers with these other cycles.

As a result, in this NOPR, DOE proposes to maintain the existing standard-size and compact-size product classes for dishwashers.

DOE requests comment on its preliminary determination to maintain the current product classes for dishwashers.

2. Technology Options

In the January 2022 Preliminary Analysis, DOE identified 19 technology options that would be expected to improve the efficiency of dishwashers, as measured by the DOE test procedure:

[30] The test results for the 31 units are available at: *www.regulations.gov/document/EERE-2018-BT-STD-0005-3213.*

condensation drying; control strategies;[31] desiccant drying; fan/jet drying; flow-through heating; improved fill control; improved food filter; improved motor efficiency; improved spray-arm geometry; increased insulation; low-standby-loss electronic controls; microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls; modified sump geometry, with and without dual pumps; reduced inlet-water temperature; supercritical carbon dioxide washing; thermoelectric heat pumps; ultrasonic washing; variable washing pressures and flow rates; and, water re-use system. *See* chapter 3, section 3.14.2 of the January 2022 Preliminary Analysis.

In the January 2022 Preliminary Analysis, DOE requested feedback on whether there are additional technologies available that may improve dishwasher performance. See chapter ES, section ES.4.3 of the January 2022 Preliminary Analysis.

Westview and Global Guideway commented that use of grey water and ''back side heat recovery'' design ideas from solar panels could be used to improve whole-home efficiency. (Westview and Global Guideway, No. 17 at p. 1) While DOE appreciates the comment, DOE notes that it identifies technology options that would improve the efficiency of the covered product itself, and typically, the technology exists as part of the product's design. Accordingly, DOE has not considered this technology option in this document.

Samsung commented that opportunities for improved energy efficiency beyond EL 1 exist, such as implementation of variable-speed motors. (Samsung, No. 22 at p. 2) DOE agrees and, as discussed in Chapter 5 of the January 2022 Preliminary TSD and this NOPR TSD, DOE implemented a 3-phase variable-speed motor design option at EL 3. Such a motor, along with more sophisticated electronic controls, allows the dishwasher to adjust the flow rate at which the water is pumped throughout the water system at different times during the cycle. Using the most energy-intensive pump operation only when needed eliminates excess energy consumption for portions of the wash cycle requiring less aggressive circulation.

AHAM commented that DOE should not be able to claim more efficient motors as a design option in this end-use product rulemaking and claim separate savings in a potential future motors standards rulemaking for those same motors. AHAM stated that if DOE regulates special and definite purpose motors in spite of AHAM's objection, then DOE must remove the savings from motors from amended standards for dishwashers. (AHAM, No. 26 at p. 15) DOE acknowledges AHAM's comment, but notes that the drain and sump motors analyzed for this rulemaking are currently not subject to motor standards.

The CA IOUs encouraged DOE to reconsider its assumption that all dishwasher models above the baseline have the same standby power levels and recognize the potential for advanced electronics and power supplies to lower standby power. The CA IOUs commented that more advanced electronics and power supplies may translate to energy savings significantly greater than those calculated by DOE. (CA IOUs, No. 27 at p. 4) DOE used the efficiency-level approach to conduct its efficiency analysis for the engineering analysis, and identified the most likely design pathways to achieve the analyzed levels. DOE did not analyze incremental improvements to electronic controls because it implemented the improved electronic controls design option at EL 1.

DOE requests comment on specific technology options for reducing standby power, including the type of technologies implemented and the estimated improvement in standby power.

In this NOPR, DOE considered the same technology options as those considered in the January 2022 Preliminary Analysis. Additionally, DOE proposes to explicitly discuss variable-speed motors as a technology option in the market and technology assessment, since DOE included it in its design options for EL 3 and higher in the engineering analysis for the January 2022 Preliminary Analysis as well as the December 2016 Final Determination. Chapter 3 of the NOPR TSD includes the detailed descriptions of each technology option.

B. Screening Analysis

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

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

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

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

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

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

Sections 6(b)(3) and 7(b) of appendix A.

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.

1. Screened-Out Technologies

The following sections detail the technology options that were screened out for this proposed rulemaking, and the reasons why they were eliminated.

a. Desiccant Drying

Desiccant drying relies on a material such as zeolite[32] to adsorb moisture to aid in the drying process and reduce drying energy consumption. In the January 2022 Preliminary TSD, DOE noted that it is aware of dishwashers

[31] Control strategies refers to how manufacturers program the microprocessor to control a dishwasher to limit the amount of water used, or to reduce the set-point temperature of the wash or rinse water.

[32] Zeolite is a highly porous aluminosilicate mineral that adsorbs moisture and releases heat to aid in the drying process.

from one manufacturer on the market in the United States that use desiccant drying. *See* chapter 4, section 4.2.1.1 of the January 2022 Preliminary TSD.

DOE has screened out desiccant drying from further consideration because it would not be practicable to manufacture on the scale necessary for the dishwasher market. Desiccant drying is a patented technology, and although multiple manufacturers hold patents for dishwasher designs with desiccant drying features, DOE is concerned that this technology option is not available for all manufacturers.

b. Reduced Inlet-Water Temperature

Reduced inlet-water temperature requires that dishwashers tap the cold water line for their water supply. Because most dishwashers in the United States tap the hot water line, this technology option would require significant alteration of existing dishwasher installations in order to accommodate newly purchased units incorporating this technology option. Therefore, DOE believes that it would not be practicable to install this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard.

c. Supercritical Carbon Dioxide Washing

Supercritical carbon dioxide washing, which uses supercritical carbon dioxide instead of conventional detergent and water to wash dishes, is currently being researched. Given that this technology is in the research stage, DOE believes that it would not be practicable to manufacture, install and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Furthermore, because this technology is in the research stage, it is not yet possible to assess whether it would have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety.

d. Ultrasonic Washing

A dishwasher using ultrasonic waves to generate a cleaning mist was produced for the Japanese market in 2002; however, this model is no longer available on the market. Available information indicates that the use of a mist with ion generation instead of water with detergent would decrease cleaning performance, impacting consumer utility.

Ultrasonic dishwashing based upon soiled-dish immersion in a fluid that is then excited by ultrasonic waves has not been demonstrated. In an immersion-based ultrasonic dishwasher, standing ultrasonic waves within the washing cavity and the force of bubble cavitation implosion can damage fragile dishware. Because no manufacturers currently produce ultrasonic consumer dishwashers, it is impossible to assess whether this technology option would have any impacts on consumers' health or safety, or product availability.

Based on this information, DOE has screened out both identified product types that incorporate the ultrasonic washing technology option.

e. Thermoelectric Heat Pumps

The thermoelectric heat pump system aims to extract waste heat from drain water and recover heat normally lost during the drying process, and apply it to the washing, rinsing, and drying phases, effectively saving energy. The technology is not commercially available yet as research and development is still underway. Therefore, DOE believes that it would not be practicable to manufacture, install and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Furthermore, because this technology is in the research stage, it is not yet possible to assess whether it would have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety.

f. Water Re-Use System

This system saves water from the final rinse of a given dishwasher cycle for use in a subsequent dishwasher cycle. A water re-use system dishwasher also performs ''drain out'' and ''clean out'' cycles if the dishwasher is not operated for a certain period of time. Both ''drain out'' and ''clean out'' events consume additional water and energy during the subsequent cycle, even though such a system saves water and energy consumption overall.

DOE has screened out this technology option as it believes that leaking and contamination from a water holding tank could potentially present negative health or safety impacts.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 of this document, including variable-speed motors, 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: condensation drying; control strategies; fan/jet drying; flow-through heating; improved fill control; improved food filter; improved motor efficiency; variable-speed motors; improved spray-arm geometry; increased insulation; low-standby-loss electronic controls; microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls; modified sump geometry, with and without dual pumps; and, variable washing pressures and flow rates.

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* are practicable to manufacture, install, and service; do not result in adverse impacts on consumer utility, product availability, health, or safety; and are not 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 dishwashers. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency dishwashers, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level "clusters" that already exist on the market). Using the design-option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to "gap fill" levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

For this analysis, DOE used a combination of these engineering approaches. This approach involved physically disassembling commercially available products, reviewing publicly available cost information, and modeling equipment cost. From this information, DOE estimated the manufacturer production costs ("MPCs") for a range of products currently available on the market. DOE then considered the incremental steps manufacturers may take to reach higher efficiency levels. In its modeling, DOE started with the baseline MPC and added the expected design options at each higher efficiency level to estimate incremental MPCs. By doing this, the engineering analysis did not factor in the additional higher-cost features with no impact on efficiency that are included in some models. However, at efficiency levels where the product designs significantly deviated from the baseline product, DOE used the efficiency-level approach to determine an MPC estimate, while removing the costs associated with non-efficiency-related components or features. DOE also provides further discussion on the design options and efficiency improvements in chapter 5 of the NOPR TSD.

a. Baseline Efficiency

For each product/product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

For dishwashers, DOE identified products available on the market rated at the current energy conservation standards levels for both standard-size and compact-size dishwasher product classes. Accordingly, DOE analyzed these products as baseline units. DOE uses the baseline unit for comparison in several phases of the NOPR analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher energy efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a unit at each higher efficiency level to the price of a unit at the baseline. Additional details on the selection of baseline units may be found in chapter 5 of the NOPR TSD.

Table IV.1 presents the baseline levels identified for each dishwasher product class in the January 2022 Preliminary Analysis, and Table IV.2 presents the baseline levels identified for each dishwasher product class in this NOPR.

TABLE IV.1—BASELINE DISHWASHER EFFICIENCY LEVELS EVALUATED IN THE JANUARY 2022 PRELIMINARY ANALYSIS [33]

Product class	Estimated annual energy use (kWh/year) *	Estimated annual energy use (kWh/year) **	Per-cycle water consumption (gal/cycle)
Standard-size	307	263	5.0
Compact-size	222	178	3.5

* Using appendix C1.
** Using appendix C2.

TABLE IV.2—BASELINE DISHWASHER EFFICIENCY LEVELS PROPOSED IN THIS NOPR

Product class	Estimated annual energy use (kWh/year) *	Estimated annual energy use (kWh/year) **	Per-cycle water consumption (gal/cycle)
Standard-size	307	263	5.0
Compact-size	222	191	3.5

* Using appendix C1.
** Using appendix C2.

DOE updated the baseline efficiency level for the compact-size dishwasher product class from 178 kWh/year to 191 kWh/year, when using appendix C2, as shown in Table IV.1 and Table IV.2. In the January 2022 Preliminary Analysis, DOE translated the current compact-size product class standard level of 222 kWh/year, which is based on 215 annual cycles, to an EAEU based on 184 annual cycles using the baseline standby power energy use estimate of 2.3 watts from the December 2016 Final Determination (*See* chapter 7 of the December 2016 Final Determination TSD).[34] However, based on its most

[33] *See* chapter 5, section 5.3.1 of the January 2022 Preliminary TSD for further information. The second Estimated Annual Energy Use column did not appear in the January 2022 Preliminary TSD, but has been added to reflect the changes in the January 2023 TP Final Rule.

[34] To translate the current dishwasher EAEU standards from 215 annual cycles to 184 annual cycles, DOE separated the EAEU into annual active mode energy use and annual standby mode energy use. DOE multiplied the annual active mode energy use by 184 cycles/year and divided by 215 cycles/year, then added back the annual standby energy use to determine updated EAEU values based on 184 annual cycles.

recent testing of compact-size dishwashers, conducted in October 2020, DOE determined for this NOPR that current baseline compact-size dishwashers consume 0.5 watts in standby mode. Using this updated standby power value to translate 222 kWh/year from 215 annual cycles to 184 annual cycles, DOE calculated an updated baseline EAEU value of 191 kWh/year for compact-size dishwashers. Accordingly, DOE is proposing the baseline compact-size dishwasher efficiency level to be 191 kWh/year and 3.5 gal/cycle.

DOE requests comment on the proposed baseline compact-size dishwasher EAEU of 191 kWh/year for this NOPR.

b. Higher Efficiency Levels

Using the efficiency-level approach, the higher efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using this approach, DOE identified four efficiency levels beyond the baseline for standard-size dishwashers and two for the compact-size product class.

Table IV.3 and Table IV.4 present the efficiency levels for standard-size and compact-size dishwashers, respectively, from the January 2022 Preliminary Analysis.

TABLE IV.3—EFFICIENCY LEVELS FOR STANDARD-SIZE DISHWASHERS EVALUATED IN THE JANUARY 2022 PRELIMINARY ANALYSIS [35]

Efficiency level	Estimated annual energy use (kWh/year) *	Estimated annual energy use (kWh/year) **	Per-cycle water consumption (gal/cycle)
Baseline	307	263	5.0
1	270	232	3.5
2	260	223	3.3
3	240	206	3.2
4 (Max-Tech)	225	193	2.4

* Using appendix C1.
** Using appendix C2.

TABLE IV.4—EFFICIENCY LEVELS FOR COMPACT-SIZE DISHWASHERS EVALUATED IN THE JANUARY 2022 PRELIMINARY ANALYSIS

Efficiency level	Estimated annual energy use (kWh/year) *	Estimated annual energy use (kWh/year) **	Per-cycle water consumption (gal/cycle)
Baseline	222	178	3.5
1	203	174	3.1
2 (Max-Tech)	144	124	1.6

* Using appendix C1.
** Using appendix C2.

In the January 2022 Preliminary Analysis, DOE requested comment on whether the efficiency levels for each product class were appropriate. DOE also observed that the design options at baseline and EL 1 for compact-size dishwashers were the same and sought feedback on the differences, if any, between baseline and EL 1 compact-size dishwasher design options. *See* Executive Summary, section ES.4.4 of the January 2022 Preliminary TSD. DOE did not receive any comments on the similarities or differences in design options between baseline and EL 1 for compact-size dishwashers. The following paragraphs summarize the comments DOE received regarding the efficiency levels for each product class.

AHAM commented that energy conservation standards more stringent than ENERGY STAR V. 6.0 criteria are likely to result in limited energy savings, degraded performance, and, due to undesirable consumer behaviors such as increased handwashing and pre-rinsing, increased water and energy consumption. (AHAM, No. 26 at p. 2) Whirlpool commented that consumers would be dissatisfied with dishwasher performance at EL 2 and above, which will lead to compensatory behaviors, such as pre-rinsing, handwashing, using heavier cycles and options, and rewashing dishes, that lower the overall expected energy and water savings from such standards. Whirlpool requested that DOE assess and quantify this compensatory behavior in its analysis. (Whirlpool, No. 21 at p. 6)

AHAM commented that, if DOE did not include a cleaning index threshold in the dishwashers test procedure, the January 2022 Preliminary Analysis justified amended energy conservation standards for dishwashers up to, but not exceeding, EL 1. AHAM stated that products on the market have a demonstrated capability to achieve EL 1 while retaining consumer satisfaction with cleaning performance, drying performance, and cycle duration. (AHAM, No. 26 at p. 3) AHAM commented that DOE's data demonstrate that many models at EL 1 would not meet DOE's cleaning index threshold of 65 proposed in the December 2021 TP NOPR, and would require re-testing. (AHAM, No. 26 at p. 13) In late comments submitted after the close of the comment period, AHAM noted that its initial analysis indicating that many models at EL 1 would not meet DOE's cleaning index threshold of 65 proposed in the December 2021 TP NOPR is unchanged by its updated comments, wherein AHAM commented that its data from the 2013 round robin testing was more relevant, given that the test variation in cleaning index based on the 2013 round robin testing was also 7. (AHAM, No. 31 at p. 4)

AHAM stated that dishwashers are nearing maximum efficiency under the available technology, and additional

[35] *See* chapter 5, section 5.3.2 of the January 2022 Preliminary TSD for further information. The second Estimated Annual Energy Use column did not appear in the January 2022 Preliminary TSD, but has been added to reflect the changes in the January 2023 TP Final Rule.

efficiency gains are not available without increasing costs or sacrificing performance or product functionality. (AHAM, No. 26 at p. 3) AHAM also commented that more radical or comprehensive the design change, the more likely retooling is necessary and the greater the product cost and the investment. AHAM also stated current dishwasher platforms are at the limit of energy and water use reduction achievable through changes in components. (AHAM, No. 26 at pp. 14–15)

DOE notes that its analyses account for consumer behaviors such as handwashing when conducting the energy and water use analyses.[36] DOE also notes that testing and teardowns showed that dishwashers that span a range of efficiencies are available currently, utilizing available technology options, and these models are capable of achieving a cleaning index of at least 70, as required by the test procedure adopted in the January 2023 TP Final Rule that would be applicable for any amended energy conservation standards. Additionally, DOE's teardown analysis showed that a product platform change would not be necessary until the max-tech efficiency level for standard-size dishwashers.

Whirlpool commented that manufacturers typically underestimate product efficiency, meaning that the vast majority of existing dishwasher models already perform within the energy limit where DOE believes cleaning performance can be maintained, rendering amended energy conservation standards beyond EL 1 for standard-size dishwashers unnecessary. (Whirlpool, No. 21 at p. 4) Whirlpool provided an example to note that if manufacturers use a 3 to 5-percent safety factor, it will imply that units rated at EL 1 (*i.e.,* 270 kWh/year and 3.5 gal/cycle when testing according to the currently applicable appendix C1) already perform between 257–262 kWh/year and 3.3–3.4 gal/cycle. Whirlpool stated that this indicates that many models are already currently within the energy limit to where DOE believes that cleaning performance can be maintained. (*Id.*) DOE notes that it evaluated dishwasher cleaning performance based on the rated energy and water use values certified by manufacturers. These results showed that units up to the rated efficiencies at EL 3 achieved the specified cleaning index threshold. Additionally, during manufacturer interviews, some manufacturers acknowledged that DOE's cleaning index threshold was achievable at efficiency levels up to EL 3 for standard-size dishwashers. These manufacturers also stated that for certain models that may not meet the cleaning index threshold, the safety margin already built into the rated energy and water use values for such models could be narrowed to maintain the existing efficiency level without requiring recertification or to exceed the existing efficiency level without requiring a redesign.

GEA supported increasing the minimum efficiency standard for standard-size dishwashers to EL 1. (GEA, No. 25 at p. 2) But, GEA commented that it opposed an increase to EL 1 if it were coupled with a cleaning performance metric because, according to GEA, DOE's cleaning performance metric as proposed in the December 2021 TP NOPR is flawed. (*Id.*) GEA commented that the limited data provided by DOE indicate that at least 73 percent of units would fail the cleaning performance score at EL 1. (*Id.*)

The CA IOUs commented that EL 2 is an appropriate higher efficiency level for both standard-size and compact-size dishwashers. The CA IOUs stated that EL 1 would not provide significant enough energy and water savings due to the fact that 100 percent of standard-size dishwasher shipments in 2020 already met this efficiency level, according to ENERGY STAR. Further, for standard-size dishwashers, the CA IOUs stated that EL 2 would provide an average lifetime savings of $4 per consumer and a net benefit to the majority of consumers, with an estimated payback period of 7 years that is less than half of the average dishwasher lifetime of 15.2 years. For compact-size dishwashers, the CA IOUs stated that EL 2 is a reasonable standard level noting that it would provide average lifetime cost savings of $36 per consumer with 60 percent of consumers experiencing a net benefit and a payback period of 7.1 years. (CA IOUS, No. 27 at pp. 1–2) The CA IOUs further commented that DOE should amend standards to EL 2 to coordinate with the adoption of the ENERGY STAR V. 7.0 [37] specification, which finalized more stringent energy and water use qualification criteria. (*Id.*)

The Joint Commenters stated that dishwashers are able to meet EL 3 while providing high consumer satisfaction across various areas of performance. The Joint Commenters noted that: DOE investigated, in the January 2022 Preliminary Analysis, the potential impact of reduced energy and water consumption on dishwasher cleaning performance and cycle time; and (2) EPA analyzed during the development of the ENERGY STAR V. 7.0 Specification how dishwashers meeting the proposed requirements perform across a range of metrics that impact consumer satisfaction. (Joint Commenters, No. 23 at p. 1) The Joint Commenters stated that EPA's analysis found that all dishwasher models rated by Consumer Reports that met the ENERGY STAR V. 7.0 requirements (*i.e.,* EL 3) received a cleaning performance rating of Very Good or Excellent. The Joint Commenters additionally noted that both DOE and EPA found no clear correlation between cycle time and energy and water consumption and that the average cycle time of models rated by Consumer Reports for models that meet ENERGY STAR V. 7.0 was 142 minutes, which is less than the average cycle time of 148 minutes across all models rated by Consumer Reports. The Joint Commenters additionally noted that higher efficiency models are rated better than average for noise performance and there were minimum differences in drying performance when comparing models that met the ENERGY STAR V. 7.0 requirements to other reviewed models. Finally, the Joint Commenters noted that the overall satisfaction rating for models meeting the ENERGY STAR V. 7.0 requirements was 4.36 compared to 3.56 for all models. (Joint Commenters, No. 23 at p. 2) NEEA commented that its consumer satisfaction data for high efficiency dishwashers supports DOE's conclusion regarding cleaning performance (*i.e.,* cleaning performance can be maintained up to EL 3 for standard-size dishwashers) and demonstrates that noise and cycle time do not increase up to EL 3. Specifically, NEEA commented that its market research found that consumer satisfaction was higher at EL 1 and EL 3 compared to the baseline (*i.e.,* EL 0) and it was likely that these units operated quietly compared to baseline units. (NEEA, No. 24 at pp. 2–3)

Whirlpool commented that amended standards beyond EL 1 would allow only a third or less of the total allowable energy usage for drying after allocating energy to cleaning, which is less than the half or more of total energy use that Whirlpool would want to allocate to drying to ensure excellent performance. (Whirlpool, No. 21 at p. 4) Whirlpool commented that manufacturers struggle to deliver consistent drying performance due to existing efficiency standards, and

[36] See section 10.4.2 in chapter 10 of the NOPR TSD.

[37] ENERGY STAR Program Requirements. Product Specification for Residential Dishwashers. Eligibility Criteria. Version 7.0. Effective date: July 19, 2023.

the problem would be exacerbated at all levels beyond EL 1. Whirlpool stated that there is not enough energy that can be allocated to drying performance after available energy is allocated to the core function of a dishwasher, cleaning performance, and that lower final rinse temperatures and shorter heated drying necessitated by efficiency standards make it difficult to completely dry all items in the consumer's load and the interior tub itself. (*Id.*) During the January 2022 Preliminary Analysis webinar, AHAM asked if DOE had evaluated the impact of potentially more stringent standards on drying performance, noise, or other factors. (AHAM, Public Meeting Transcript, No. 20 at p. 43) AHAM commented that in order to design dishwashers that meet the cleaning index threshold requirements proposed in the December 2021 TP NOPR as well as potentially more stringent standards, it is likely that manufacturers will need to reduce drying energy, lengthen cycles, and potentially impact noise levels. (AHAM, No. 31 at p. 4)

Whirlpool commented that beyond EL 1, plastic tub dishwashers which are lower priced and common amongst lower-income consumers, may not be able to retain enough heat to keep the internal temperature high enough with lower rinse temperatures and shorter heated drying durations, to adequately remove water from dishes and the interior tub surfaces. (Whirlpool, No. 21 at p. 4) Whirlpool further commented that if manufacturers cannot offer competitive plastic tub dishwashers, it would force low-income consumers to spend approximately $200 or more on the purchase of a new dishwasher, negating potential lifetime energy and water savings for the consumer. (Whirlpool, No. 21 at p. 5)

DOE notes that appendix C2 regulates only the normal cycle, as long as the normal cycle meets the specified cleaning index threshold. As such, DOE expects that a variety of other, non-regulated cycles available on current dishwasher models would continue to be available even if DOE were to amend existing standards, given that such cycle types and/or cycle options have not been, and would continue to not be, subject to any water or energy limits as a result of any energy conservation standards. Specifically, DOE expects quick cycles, which often clean a load within 1 hour or less, would still be available on dishwasher models that currently offer such a cycle. DOE also expects existing drying options would continue to be available on dishwashers regardless of amended standards up to at least EL 3. DOE additionally expects any amended standards up to at least EL 3 would not stifle innovation around drying options and other features that could be implemented on dishwashers outside the regulated cycle.

Additionally, while DOE's teardown analysis shows that plastic tubs are available in dishwasher models at efficiency levels higher than EL 1, and DOE estimates that plastic tubs can be used up to EL 3 based on its testing and teardowns, DOE also recognizes potential utility concerns associated with implementing plastic tubs at higher efficiency levels. DOE received similar feedback during manufacturer interviews that some aspect of dishwasher performance could be compromised particularly at EL 3 and beyond and DOE considered this feedback during its analysis.

DOE additionally notes that its testing demonstrated that standard-size dishwashers can achieve the threshold cleaning performance on the normal cycle at all soil levels up to EL 3 and at least one of the three soil levels at the max-tech efficiency level (EL 4). Additionally, the ENERGY STAR Most Efficient 2022 [38] database includes other models besides the max-tech unit that DOE tested that meet or exceed EL 4. To qualify for ENERGY STAR Most Efficient 2022, units need to meet a minimum cleaning index of 70, including scores for spots, streaks, and rack contact marks which are excluded from DOE's test procedure at appendix C2, at each soil level on the normal cycle. Accordingly, standard-size dishwashers that can achieve the threshold cleaning performance on the normal cycle at EL 4 currently exist on the market. DOE's testing also indicated that compact-size dishwashers can achieve the threshold cleaning performance on the normal cycle even at the heavy soil load.[39]

During the January 2022 Preliminary Analysis webinar, AHAM asked if DOE had conducted any testing or crosswalk to evaluate the impact of the cleaning performance requirement proposed in the December 2021 TP NOPR on the efficiency levels presented in the January 2022 Preliminary Analysis. (AHAM, Public Meeting Transcript, No. 20 at p. 15) AHAM commented that if DOE included a cleaning performance metric, DOE would need to account for the changes in measured energy and water efficiency that would likely result from the amendment and repeat its analysis to re-establish the baseline and examine the distribution of higher-efficiency models. (AHAM, No. 26 at pp. 3, 14) AHAM commented that, based on the data DOE presented in the January 2022 Preliminary TSD, most dishwashers would need to be re-rated, and many may be rated at lower efficiency levels because the cleaning index threshold proposed in the December 2021 TP NOPR would require the products be tested at their highest energy consuming cycle. (AHAM, No. 26 at p. 13)

DOE notes that the January 2023 TP Final Rule has established the cleaning performance requirement in the dishwasher test procedure that will be required to demonstrate compliance with any amended standards. That is, any dishwasher manufactured or sold in the United States on or after the compliance date of any such amended standards will be required to meet a minimum cleaning index threshold of 70 as a condition of a valid test cycle. As such, no products would have to be re-rated to comply with the current standards. Based on an analysis of DOE's test data (presented previously in the December 2021 TP NOPR, January 2022 Preliminary TSD, and January 2023 TP Final Rule), dishwasher models that can meet or exceed the cleaning index threshold of 70 on the normal cycle for all test cycles are already available up to EL 3. Additionally, as mentioned elsewhere in this document, during manufacturer interviews, some manufacturers acknowledged that DOE's cleaning index threshold was achievable at efficiency levels up to EL 3 for standard-size dishwashers and, for certain models that may not meet this threshold, the rated energy and water use values have an allowance to allow potential increases in energy and water consumption without requiring models to be re-rated at a higher energy and water consumption value. Accordingly, DOE has not adjusted its baseline or higher efficiency levels in this NOPR.

Whirlpool reiterated its comments from the October 2020 RFI that until water filtration technology changes and poor water dilution issues were resolved by a new technology, Whirlpool expects cleaning performance will degrade at increasing efficiency levels. (Whirlpool, No. 21 at p. 3) While DOE recognizes that poor water dilution can impact cleaning performance, as mentioned elsewhere in this document, DOE's testing and analysis indicates that satisfactory cleaning performance is

[38] ENERGY STAR Most Efficient 2022. Dishwashers. Available at: *www.energystar.gov/most-efficient/me-certified-dishwashers/results?is_most_efficient_filter=Most+Efficient* (last accessed October 28, 2022).

[39] All of the compact units in DOE's test sample were non-soil sensing dishwashers, which are not required under appendix C2 to be tested with lesser soil loads if the cleaning performance threshold is met with the heavy soil load.

achievable at all efficiencies. Additionally, the minimum cleaning index threshold requirement specified in the new appendix C2 ensures that cleaning performance will be maintained after the compliance date of any new standards.

The Joint Commenters commented that DOE should evaluate an additional intermediate efficiency level for compact-size dishwashers between EL 1 and EL 2 to cover a significant gap of models that meet the requirements of EL 1, but do not meet EL 2. The Joint Commenters noted that over half of the models listed in CCMS meet the requirements of EL 1, but fall short of EL 2. (Joint Commenters, No. 23 at pp. 2–3) NEEA also commented on the lack of gradation between EL 1 and EL 2 and stated that DOE should consider adding an efficiency level between EL 1 and EL 2 for compact-size dishwashers for similar reasons. NEEA stated that the TSD shows a group of products at 1.75 gal/cycle and 155 kWh/year as the water and energy values for the potential intermediate level. (NEEA, No. 24 at p. 2) DOE considered whether to include an additional gap-fill level between EL 1 and EL 2 for compact-size dishwashers in the NOPR analysis. However, DOE found only 11 compact-size basic models out of 65 compact-size basic models, excluding ''ultra-compact'' units with capacities less than 4 place settings,[40] that could be considered for such a gap-fill level, with EAEUs ranging from 155 kWh/year to 144 kWh/year and water consumption from 1.8 gal/cycle to 1.7 gal/cycle. Given that compact-size dishwashers comprise roughly 2 percent of the market, and the even smaller share of dishwashers at such an intermediate level, DOE determined that an additional gap-fill efficiency level is not warranted.

The CA IOUs commented that DOE should revisit its analysis of the max-tech efficiency level for standard-size dishwashers. The CA IOUs commented that they reviewed DOE's Compliance Certification Database (''CCD'') and observed that the current market exceeds the max-tech level specified in the January 2022 Preliminary TSD. The CA IOUs noted that even though DOE screened out some technologies, it appeared that the max-tech units observed by the CA IOUs represent levels of efficiency available in today's market beyond DOE's max-tech level. (CA IOUs, No. 27 at pp. 5–6) DOE notes that while units exist that exceed the max-tech efficiency level presented in the January 2022 Preliminary TSD, DOE did not consider these units for the max-tech efficiency level for the following reasons: (1) they utilize a cold-water connection, which DOE eliminated from consideration as a technology option in the screening analysis; (2) they have a rated capacity of eight place settings, but do not use a typical standard dishwasher configuration (*i.e.,* they have an 18-inch width instead of the more common 24-inch width); (3) they are no longer available on the market; or (4) there is an inconsistency between the rated EAEU in DOE's CCD and the EAEU listed on the model's EnergyGuide label. DOE reviewed the CCD and proposes to maintain the current EL 4 level for the reasons stated.

Table IV.5 shows the efficiency levels DOE evaluated for standard-size dishwashers in this NOPR analysis.

TABLE IV.5—EFFICIENCY LEVELS FOR STANDARD-SIZE DISHWASHERS PROPOSED IN THIS NOPR

Efficiency Level	Estimated annual energy use (kWh/year) *	Estimated annual energy use (kWh/year) **	Per-cycle water consumption (gal/cycle)
Baseline	307	263	5.0
1	270	232	3.5
2	260	223	3.3
3	240	206	3.2
4 (Max-Tech)	225	193	2.4

* Using appendix C1.
** Using appendix C2.

DOE selected EL 1 to correspond to the current ENERGY STAR V. 6.0 qualification criteria for standard-size dishwashers. Seventy percent of standard-size dishwasher basic models, as included in DOE's CCD,[41] are rated at EL 1. DOE considered an intermediate level between ENERGY STAR V. 6.0 and the baseline, but determined it to be unnecessary, since only 5 percent of standard-size dishwasher basic models do not meet the water and energy use criteria of the ENERGY STAR V. 6.0 level. Therefore, further disaggregation of such a small portion of the market is not warranted. DOE selected EL 3 as the level that corresponds to the energy and water consumption levels that correspond to the 2022 ENERGY STAR Most Efficient[42] qualification criteria as well as the finalized ENERGY STAR V. 7.0 criteria which have a scheduled effective date of July 2023.[43] Additionally, 10 percent of standard-size dishwasher basic models meet the EL 3 criteria according to DOE's CCD. DOE established EL 2 as a gap-fill level by identifying product efficiency ''clusters'' when analyzing the range of efficiencies available on the market. The EAEU and water consumption values associated with a significant cluster, comprising approximately 14 percent of basic models, between EL 1 and EL 3 served as the basis for selecting EL 2. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product. EL 4 is the max-tech efficiency level, as defined by the maximum available technology that DOE identified on the market at the time of its analysis, excluding from consideration those models discussed previously. DOE did not identify any working prototypes that were more efficient than this maximum available technology.

Table IV.6 shows the efficiency levels DOE evaluated for compact-size dishwashers in this NOPR analysis.

[40] DOE did not include ''ultra-compact'' compact-size dishwashers when considering a gap-fill efficiency level because these dishwashers could limit utility for certain consumers given their small capacity.

[41] U.S. Department of Energy's Compliance Certification Database. Dishwashers (last accessed: July 19, 2022).

[42] 2022 ENERGY STAR Most Efficient requirement for dishwashers: *www.energystar.gov/sites/default/files/ENERGY%20STAR%20Most%20Efficient%202022%20Dishwasher%20Final%20Criteria%20Memo_0.pdf.*

[43] ENERGY STAR Program Requirements for Residential Dishwashers: *www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Version%207.0%20Residential%20Dishwasher%20Final%20Specification.pdf.*

TABLE IV.6—EFFICIENCY LEVELS FOR COMPACT-SIZE DISHWASHERS PROPOSED IN THIS NOPR

Efficiency level	Estimated annual energy use (kWh/year) *	Estimated annual energy use (kWh/year) **	Per-cycle water consumption (gal/cycle)
Baseline	220	191	3.5
1	203	174	3.1
2 (Max-Tech)	144	124	1.6

* Using appendix C1.
** Using appendix C2.

DOE evaluated two incremental efficiency levels above the baseline for compact-size dishwashers. DOE selected EL 1 to correspond to the current ENERGY STAR V. 6.0 qualification criteria for compact-size dishwashers. Sixty-six percent of compact-size dishwasher models in DOE's CCD are rated at EL 1. DOE identified EL 2 as the max-tech efficiency level, defined by the maximum available technology that DOE identified on the market at the time of its analysis.[44] Based on its analysis of the CCD, DOE identified EAEU and water consumption levels of 144 kWh/year, based on 215 annual cycles, and 1.6 gal/cycle for EL 2. Approximately 21 percent of compact-size basic models in DOE's CCD are rated at EL 2. At EL 2, all units in DOE's CCD are either under-counter drawer units or ultra-compact units with rated capacities of 1 or 2 place settings. DOE is not aware of any countertop compact-size dishwasher basic models on the market with rated capacities of 4 or more place settings beyond EL 1. However, based on its analysis, DOE understands that it is technologically feasible to design countertop compact-size dishwashers with 4 or more place settings that can meet the energy and water consumption requirements at EL 2.

DOE requests feedback on the efficiency levels analyzed for each product class in this proposal.

2. Manufacturer Production Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using the physical teardown approach. For each product class, DOE tore down a representative sample of models spanning the entire range of efficiency levels, as well as multiple manufacturers within each product class. DOE aggregated the results so that the cost-efficiency relationship developed for each product class reflects DOE's assessment of a market-representative "path" to achieve each higher efficiency level. The resulting bill of materials provides the basis for the MPC estimates.

To develop the incremental MPCs associated with improving product efficiency, DOE started with the baseline unit cost model and added the expected changes associated with improving efficiency at each higher efficiency level. By doing this, DOE excluded the costs of any non-efficiency related components from the more efficient units.

Table IV.7 and Table IV.8 show incremental manufacturing costs developed in the January 2022 Preliminary Analysis for standard-size and compact-size dishwashers, in 2020 dollars.

TABLE IV.7—EFFICIENCY LEVELS AND INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR STANDARD-SIZE DISHWASHERS EVALUATED IN THE JANUARY 2022 PRELIMINARY ANALYSIS [45]

Efficiency level	Estimated annual energy use (kWh/year) *	Per-cycle water consumption (gal/cycle)	Incremental MPC (2020$)
Baseline	263	5.0	-
1	232	3.5	$18.27
2	223	3.3	27.53
3	206	3.2	71.12
4 (Max-Tech)	193	2.4	113.86

* Using appendix C2.

[44] For reasons similar to those described in the consideration of a potential compact-size dishwasher gap-fill level, ultra-compact dishwashers were excluding from consideration as the compact-size max-tech level. Additionally, as discussed previously, DOE did not consider those compact-size models with a discrepancy between the rated EAEU in the CCD and the value on the EnergyGuide label.

[45] See Chapter ES section ES.3.3.4 of the January 2022 Preliminary Analysis.

TABLE IV.8—EFFICIENCY LEVELS AND INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR COMPACT-SIZE DISHWASHERS EVALUATED IN JANUARY 2022 PRELIMINARY ANALYSIS [46]

Efficiency level	Estimated annual energy use (kWh/year) *	Per-cycle water consumption (gal/cycle)	Incremental MPC (2020$)
Baseline	178	3.5	
1	174	3.1	
2 (Max-Tech)	124	1.6	$37.41

* Using appendix C2.

In the January 2022 Preliminary Analysis, DOE sought comment on whether the MPCs at each efficiency level were appropriate given the associated incremental changes manufacturers would likely make to meet these levels.

The Joint Commenters and NEEA commented that DOE may be overestimating the incremental costs to meet intermediate efficiency levels for standard-size dishwashers, citing EPA's analysis of prices of available models on the market meeting the EL 3 level which is equivalent to the ENERGY STAR V. 7.0 criteria. While both commenters acknowledged that EPA's methodology is based on retail pricing instead of MPCs, the Joint Commenters and NEEA concluded that DOE should reevaluate the incremental costs at EL 3 since DOE's preliminary analysis showed an incremental cost of more than two times the EPA estimate. (Joint Commenters, No. 23 at p. 2; NEEA, No. 24 at pp. 1–2)

DOE notes that its incremental MPCs, which were determined from teardowns and reviewed with manufacturers during interviews, estimate the manufacturing cost of dishwashers including any necessary redesigns to meet potential standards. Topics of discussion with manufacturers included the design options that would be used to reach each efficiency level for standard-size products as well as the costs associated with those design options. DOE also reviewed its design options assumptions and cost estimates for all components at each EL to identify if any changes to its preliminary estimates would be appropriate. Based on these discussions and additional analysis, DOE estimated its standard-size dishwasher EL 3 costs to be the same as those presented in the January 2022 Preliminary TSD, adjusted to 2022$.

For the other efficiency levels above the baseline for standard-size dishwashers, DOE received manufacturer feedback that DOE had identified all of the design options manufacturers would use to improve efficiencies. Manufacturers also generally agreed with the design options DOE assumed for each efficiency level, but some manufacturers asserted that the distinction between EL 1 and EL 2 is less than DOE's preliminary estimates. Upon reviewing its teardown sample again, DOE observed that the same technology options exist at both EL 1 and EL 2, with the EL 2 units often being rated with a smaller tolerance on the rated EAEU and water consumption. In general, DOE observed that EL 2 units reduce rated energy and water use primarily by improving the control strategy and design tolerances that are implemented to more closely control water temperature, water fill volumes, *etc.* Accordingly, in this NOPR, DOE revised its estimated design options and MPC for standard-size dishwashers at EL 2. Specifically, DOE estimates that the same design options would be implemented at EL 2 as are used at EL 1, but with improved control strategies. Under this approach, the MPC at EL 2 would be the same as that at EL 1.

Table IV.9 shows the baseline MPCs for standard-size and compact-size dishwashers estimated for this NOPR. Table IV.10 and Table IV.11 show the incremental MPCs from the baseline for standard-size and compact-size dishwashers, respectively, that were estimated for this NOPR.

TABLE IV.9—BASELINE MANUFACTURER PRODUCTION COSTS ESTIMATED FOR THIS NOPR

Product class	Estimated annual energy use (kWh/year) *	Per-cycle water consumption (gal/cycle)	Manufacturer production cost (2022$)
Standard-size	263	5.0	184.35
Compact-size	191	3.5	215.17

* Using appendix C2.

TABLE IV.10—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR STANDARD-SIZE DISHWASHERS PROPOSED FOR THIS NOPR

Efficiency level	Estimated annual energy use (kWh/year) *	Per-cycle water consumption (gal/cycle)	Incremental MPC (2022$)
Baseline	263	5.0	
1	232	3.5	10.17
2	223	3.3	10.17
3	206	3.2	61.50
4 (Max-Tech)	193	2.4	91.25

* Using appendix C2.

[46] See Chapter ES section ES.3.3.5 of the January 2022 Preliminary Analysis.

TABLE IV.11—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR COMPACT-SIZE DISHWASHERS PROPOSED FOR THIS NOPR

Efficiency level	Estimated annual energy Use (kWh/year) *	Per-cycle water consumption (gal/cycle)	Incremental MPC (2022$)
Baseline	191	3.5	
1	174	3.1	
2 (Max-Tech)	124	1.6	39.45

*Using appendix C2.

The detailed description of DOE's determination of costs for baseline and higher efficiency levels is provided in chapter 5 of the NOPR TSD.

DOE requests comment on the baseline MPCs and incremental MPCs developed for each dishwasher product class.

3. Manufacturer Selling Price

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes dishwashers.[47] See chapter 12 of the NOPR TSD for additional detail on the manufacturer markup.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert 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.

For dishwashers, DOE further developed baseline and incremental markups for each link in the distribution chain (after the product leaves the manufacturer). 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.[48]

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups. Specifically, DOE used the 2017 Annual Retail Trade Survey for the ''electronics and appliance stores'' sector to develop retailer markups.[49]

AHAM commented that it objects to DOE's use of incremental markups in translating manufacturer costs to retail prices. AHAM stated that it has offered a wide range of actual results demonstrating that DOE's theoretical model has no empirical justification. (AHAM, No. 26 at p. 10)

DOE's incremental markup approach assumes that an increase in profitability, which is implied by keeping a fixed markup when the product price goes up, is unlikely to be viable over time in reasonably competitive markets. DOE recognizes that retailers are likely to seek to maintain the same markup on appliances in response to changes in manufacturer sales prices after an amendment to energy conservation standards for dishwashers. However, DOE believes that retail pricing is likely to adjust over time as retailers are forced to readjust their markups to reach a medium-term equilibrium in which per-unit profit is relatively unchanged before and after standards are implemented.

DOE acknowledges that retailer markup practices in response to amended standards are complex and vary with business conditions. However, DOE's analysis necessarily only considers changes in appliance offerings that occur in response to amended standards. DOE continues to maintain that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable.

Chapter 6 of the NOPR TSD provides additional detail on DOE's development of the baseline and incremental retail markups.

E. Energy and Water Use Analysis

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

DOE determined the average annual energy and water consumption of dishwashers by multiplying the per-cycle energy and water consumption by the number of cycles per year. In the January 2022 Preliminary Analysis, DOE used the Energy Information Administration (''EIA'')'s 2015 *Residential Energy Consumption Survey* (''*RECS*'') data to calculate an estimate of annual number of cycles.[50] Having determined number of cycles of dishwasher use per year for each RECS household, DOE determined the corresponding annual energy and water consumption. In the January 2022 Preliminary Analysis, DOE determined the average annual cycles of operation for dishwashers to be 185 cycles per year based on *RECS 2015.*

[47] U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.* Available at *www.sec.gov/edgar/search/* (last accessed September 27, 2022).

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

[49] U.S. Census Bureau, *Annual Retail Trade Survey.* 2017. *www.census.gov/programs-surveys/arts.html.*

[50] U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey, 2015 Public Use Microdata Files, 2015. Washington, DC. Available online at: *www.eia.doe.gov/emeu/recs/recspubuse15/pubuse15.html.*

The CA IOUs recommended that DOE reconsider its decision to use 185 average cycles per year in its analysis, and stated that *RECS 2015* may not accurately represent current consumer usage suggesting that later surveys may find that use bounces back. Additionally, the CA IOUs requested that DOE conduct a new survey on consumer usage to capture current usage patterns and dishwasher load levels. (CA IOUs, No. 27 at p. 3)

For this NOPR analysis, DOE primarily used data from *RECS 2020,* which provides information on the frequency of dishwasher usage per week for each household, to determine dishwasher utilization.[51] *RECS 2020* is the most recent data available regarding consumer usage that is based on a nationally representative sample of housing units.[52] For surveyed households with a dishwasher for which usage was greater than zero, *RECS 2020* showed an increase, relative to *RECS 2015,* to an average of 197 cycles per year, which was used in this analysis.[53] A report from Sun *et al.* showed that the average annual dishwasher cycle counts obtained from Pecan Street field metered data based on a limited household sample size and limited geographic locations were comparable with the average cycle counts reported by *RECS 2015* and *RECS 2020.*[54] DOE is not aware of any publicly available data source in which dishwasher load levels are reported.

NEEA stated that both market and field data analysis reveal typical gas water heater efficiency factor is 0.62 to 0.70 EF, much lower than the 0.78 EF used in the January 2022 Preliminary TSD. NEEA recommended DOE to revisit the gas water heater efficiency value to ensure it is nationally representative and to provide justification for the typical gas water heat efficiency value in the final TSD. (NEEA, No. 24 at pp. 4–5) The Joint Commenters also urged DOE to reevaluate the assumed water heater efficiencies to better reflect actual efficiencies in the field in order to more accurately capture the energy savings associated with reduced hot water consumption. The Joint Commenters stated that DOE is overestimating the efficiencies of current water heaters in the field and therefore underestimating the real-world energy savings for dishwashers. The Joint Commenters estimated that the shipment-weighted efficiencies for new water heaters are 92 percent and 64 percent for electric and gas water heaters, respectively, and that average efficiencies of water heaters found in the existing housing stock are likely lower than those of new shipments. (Joint Commenters, No. 23 at pp. 3–4)

In its analyses for consumer water heaters, DOE calculates the energy use of water heaters using a simplified energy equation, the water heater analysis model (''WHAM''). WHAM accounts for a range of operating conditions and energy efficiency characteristics of water heaters. To describe energy efficiency characteristics of water heaters, WHAM uses three parameters that also are used in the DOE test procedure: recovery efficiency, standby heat-loss coefficient, and rated input power. The January 2022 Preliminary TSD states that DOE used a recovery efficiency of 78 percent for gas water heaters, not 0.78 EF, for the calculation of hot water energy savings. The hot water energy savings are almost directly proportional to the recovery efficiency, and the NOPR analysis uses the most recent data reported for the 2022 consumer water heater rulemaking.[55] DOE requests comment on the efficiency characteristics used in the consumer water heater rulemaking described here and encourages comment in both rulemakings.

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for dishwashers.

DOE requests comment on the amount of water and energy used for pre-rinsing dishes and flatware before their placement into a dishwasher.

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

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (MSP, 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 dishwashers in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from *RECS 2020.* For each sample household, DOE determined the energy consumption for dishwashers and the appropriate energy price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of dishwashers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached

[51] U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey, 2015 Public Use Microdata Files, 2015. Washington, DC. Available online at: *www.eia.gov/consumption/residential/data/2020/.*

[52] Compared to *RECS 2015, RECS 2020* has a 72-percent larger sample and more refined definition of household demographics, which provides more granular information for the LCC analyses about the presence of dishwashers in U.S. households and the variability of their use.

[53] DOE notes the 6-percent difference in annual cycle values used in the test procedure final rule for dishwashers (88 FR 3234) and this NOPR analysis. Appendix 8G shows the LCC results using the *RECS 2015* sample.

[54] Sun, Qingyi, *et. al.* 2022. *Using Field-Metered Data to Characterize Consumer Usage Patterns of Residential Diswashers.* Lawrence Berkeley National Laboratory, Berkeley, CA.

[55] DOE, 2022–03 Preliminary Analysis Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Water Heaters, March 2022. EERE–2017–BT–STD–0019–0018. Available at: *www.regulations.gov/document/EERE-2017-BT-STD-0019-0018* (last accessed June 21, 2022).

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 dishwashers user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[56] The model calculated the LCC for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of dishwashers as if each were to purchase a new product in the expected year of compliance with new or amended standards. Amended standards would apply to dishwashers manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(B)) 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 dishwashers.

Table IV.12 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.12—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	Assumed no change in installation costs with efficiency level.
Annual Energy and Water Use	The standby wattage multiplied by the hours per year in standby mode. Average number of cycles based on *RECS 2020* data. *Variability:* Based on the *RECS 2020.*
Energy Prices	*Electricity:* Based on EEI 2021. *Variability:* Regional energy prices determined for 9 regions.
Energy Price Trends	Based on *AEO 2022* price projections.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	*Average:* 15.2 years.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2027.

* 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.

AHAM stated that consumer costs and benefits from operating a dishwasher are impacted more by the methods used to clean dishes, such as washing by hand, pre-rinsing and then using a dishwasher, or using a dishwasher without pre-rinsing than the economics of running a dishwasher itself. AHAM further stated that instead of using the existing LCC model, DOE should analyze the cost to a consumer of these three principal modes of dish cleaning. (AHAM, No. 26 at pp. 7–8)

DOE included the water and energy volumes of washing dishes by hand as an alternative to washing dishes by machine in the NIA model and is described in section 10.4.2 in chapter 10 of the NOPR TSD. DOE acknowledges that a broader perspective on dish cleaning could be useful in identifying opportunities for energy and water conservation, but the type of analysis that AHAM proposes is outside the scope of the standards rulemaking process, which is focused on evaluating the economic justification of potential standards on a particular product, in this case dishwashers, according to the criteria set by EPCA. In this rulemaking, DOE is only estimating the shipments of TSL3 would drop 0.01% compared to the no new standards case during the 30-year analysis period (2027–2056). DOE welcomes comment on the shipments estimation and publicly available data on the energy and water consumption from pre-rinsing dishes.

NEEA stated that efficiency improvements to an appliance can be considered capital investments, with ''returns'' being the money saved from utility bill reductions. NEEA commented that the return on investment (''ROI'') is easy to calculate using this peer-reviewed method and adds additional insight for stakeholders and decision-makers and encouraged DOE to calculate and consider the ROI for each efficiency level in its analysis. (NEEA, No. 24 at p. 5)

DOE acknowledges that ROI is a metric that can be useful in evaluating investments in energy efficiency. However, the measures that DOE has historically used to evaluate the economic impacts of standards on consumers—LCC savings and PBP—are more closely related to the language in EPCA that requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) Therefore,

[56] Crystal Ball™ is commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed October 22, 2021).

DOE finds it reasonable to continue to use those measures.

AHAM commented that DOE's use of the term ''Net Cost'' for impacted households is incomplete and misleading. AHAM suggested that the ''Net Cost'' should be calculated only among the affected households at a given standard level. (AHAM, No. 26 at p. 10)

DOE notes that EPCA requires DOE to consider the impact of standards on ''consumers'' of a product, not only those who would be affected by a standard.[57] Therefore, showing the share of all consumers purchasing dishwashers who would experience a net LCC cost or experience no impact at a given standard level is appropriate. The LCC spreadsheet provides information that allows calculation of the share of affected consumers that experience a net cost.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because DOE applied an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. An experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level. To derive the learning rate parameter for dishwashers, DOE obtained historical Producer Price Index (''PPI'') data for dishwashers from the Bureau of Labor Statistics (''BLS''). A PPI for ''all other miscellaneous household appliances'' was available for the time period between 1988 and 2014.[58] However, the all other miscellaneous household appliances PPI was discontinued beyond 2014 due to insufficient sample size. To extend the price index beyond 2014, DOE assumed that the price index of primary products of major household appliance manufacturing would trend similarly to all other miscellaneous household appliances. This is because, based on communications with BLS researchers, discontinued series are often grouped into the primary products under the more aggregated PPI series. Examining the PPI of all other miscellaneous household appliances and primary products of major household appliances shows that the magnitudes of both price trends align with each other. Inflation-adjusted price indices were calculated by dividing the PPI series by the gross domestic product index from Bureau of Economic Analysis for the same years. Using data from 1988–2021, the estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 25.1 percent.

NEEA supported DOE's approach to applying a learning rate for dishwasher prices and concluded that pre-rinsing of dishes remains consistent after an updated dishwasher standard. (NEEA, No. 24 at pp. 5–6)

DOE assembled a time series of historical annual shipments of dishwashers for 1972–2020. The data for historical annual shipments were used to project future shipments and to estimate cumulative shipments (production). Projected shipments after 2020 were obtained from the no-new-standards case projections made for the NIA.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for dishwashers at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy and Water Prices

Because it captures the incremental savings associated with a change in energy use from higher efficiency, a marginal electricity price more accurately represents an incremental change in consumer costs than would average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2021 using data from EEI Typical Bills and Average Rates reports.[59] DOE used the EEI data to define a marginal price as the ratio of the change in the bill to the change in energy consumption.

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by a projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO 2022. AEO 2022* has an end year of 2050.[60] To estimate prices after 2050, a constant trend was used for all years.

DOE obtained data on public supply water prices for 2020 from the *Water and Wastewater Rate Survey* conducted by Raftelis Financial Consultants and the American Water Works Association.[61] The survey covers approximately 194 water utilities and 140 wastewater utilities, analyzing each industry (water and wastewater) separately. The water survey includes the cost to consumers of a given volume of water for each utility. The total consumer cost is divided into fixed and volumetric charges. DOE's calculation of water prices uses only volumetric charges, as only those charges would be affected by a change in water consumption. Including the fixed charge in the price average would lead to a higher water price. For wastewater utilities, the data format is similar except that the price represents the cost to treat a given volume of wastewater.

5. Maintenance and Repair Costs

Maintenance costs are associated with maintaining the operation of the product; repair costs are associated with repairing or replacing product components that have failed in an appliance. Typically, small incremental increases in product efficiency produce no, or only minor, changes in maintenance and repair costs compared to baseline efficiency products. In this NOPR analysis, DOE included no changes in maintenance or repair costs for dishwashers that exceed baseline efficiency.

6. Product Lifetime

For dishwashers, DOE developed a distribution of lifetimes from which specific values are assigned to the

[57] Some dishwasher consumers would not be affected by a given standard if they already purchased a product at or above that efficiency level in the no-new-standards case.

[58] U.S. Bureau of Labor Statistics, PPI Industry Data, Major household appliance manufacturers, Product series ID: PCU 33522033522011. Data series available at: *www.bls.gov/ppi/.*

[59] Edison Electric Institute. Typical Bills and Average Rates Report. 2021. Winter 2021, Summer 2021: Washington, DC.

[60] EIA. *Annual Energy Outlook 2022 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed September 22, 2022).

[61] The American Water Works Association & Raftelis Financial Consultants, Inc., 2020 RFC/AWWA Water and Wastewater Rate Survey. 2021. Charlotte, NC.

appliances in the samples. DOE conducted an analysis of actual lifetime in the field using a combination of historical shipments data, the stock of the considered appliances in the *American Housing Survey,* and responses in *RECS* on the age of the appliances in the homes. The data allowed DOE to estimate a survival function, which provides an average appliance lifetime. This analysis yielded a lifetime probability distribution with an average lifetime for dishwashers of approximately 15.2 years. See chapter 8 of the NOPR TSD for further details.

DOE requests comment and information on dishwasher lifetime.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for dishwashers based on the opportunity cost of consumer funds.

DOE applies weighted-average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[62] DOE notes that the LCC does not analyze the appliance purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this lifetime scale into account. Given the 30-year analysis period modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances[63] (''SCF'') starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent. See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of dishwashers for 2027, DOE used data from the engineering analysis, the manufacturer interviews, and DOE's CCD. DOE assumed no annual efficiency improvement for the no-new-standards case based on the current market evaluation and the efficiency distributions used in the December 2016 Final Determination. The estimated market shares for the no-new-standards case for dishwashers are shown in Table IV.13. See chapter 8 of the NOPR TSD for further information.

AHAM commented that it was inaccurate to use model counts from DOE's CCD as a means of determining the saturation of the efficiency levels. AHAM noted that the model count in the CCD substantially overstates the number of different models, and that, based upon AHAM's review, a majority of the apparently higher efficiency models in the CCD are in fact no longer widely available through retail channels or are for niche groups of consumers. AHAM stated that a comparison of AHAM shipments data to DOE's CCD model counts by efficiency show a significant difference between models being shipped for sale on the market versus what is listed in DOE's CCD. (AHAM, No. 26 at p. 4) Samsung recommended that DOE amend dishwasher standards to EL 1 or greater given the market penetration for ENERGY STAR V. 6.0 dishwashers (which represents units at EL 1 and above) was approximately 91 percent. (Samsung, No. 22 at p. 2)

For this NOPR, for the standard-size product class, DOE used information provided by the manufacturer interviews, and for the compact-size product class, counts of models in the DOE CCD as a means of determining the market shares of the efficiency levels because that is the best source that was available. DOE agrees that shipment-weighted efficiency distributions would be preferable to shares based on model counts, but such data were not available for compact dishwashers, and there is no publicly available data to support making an adjustment to the model count market shares. DOE's approach may well overstate the market share of higher-efficiency products in the absence of new standards, but this would mean that the energy and economic benefits estimated by DOE for new standards are likely understated. The justification for the adopted standards could be even stronger if DOE were able to use actual shipment data for the model counts. DOE welcomes recent shipments data by efficiency level and will consider using such data for the final rule.

[62] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[63] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019 (last accessed August 20, 2021). *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

TABLE IV.13—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR DISHWASHERS IN 2027

TSL	Product Class 1 standard-size dishwashers:		Product Class 2 compact-size dishwashers:	
	Annual energy use* (kWh/year)	Market share (%)	Annual energy use* (kWh/year)	Market share (%)
Baseline	272	7	197	13
1	241	84	181	66
2	232	6	129	21
3	214	3		
4	202	0		

*Based on the assumption of 197 dishwasher cycles per year.

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the dishwasher purchased by each sample household in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

AHAM objected to DOE's use of random assignment of *RECS* households to the no-new-standards case and standard cases, which assumes that consumers are agnostic to energy costs. AHAM stated that DOE has never provided a justification for the assumption it uses that operating costs play no effect on consumer choice for dishwashers. AHAM added that it is very unlikely that consumers with very high potential LCC savings would not have already decided to purchase a more efficient dishwasher (*i.e.,* in the no-new-standards case), and DOE's assumption that these consumers are indifferent to operating costs appears contrary to common sense and experience in the retail field. AHAM stated that the most appropriate solution is to have a much more robust consumer choice theory, and in the absence of such theory, DOE should use median, not mean values in its analysis and conclusions. (AHAM, No. 26 at pp. 8–9)

While DOE acknowledges that economic factors may play a role when consumers decide on what type of dishwasher to install, assignment of dishwasher efficiency for a given installation, based solely on economic measures such as LCC or simple PBP most likely would not fully and accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions with respect to energy efficiency are unlikely to be perfectly correlated with energy use, as described as described elsewhere in this document. DOE maintains that the method of assignment is a reasonable approach, one that reflects behavior in the dishwasher market, where market failures result in purchasing decisions not being perfectly aligned with economic interests, more realistically than relying only on apparent cost-effectiveness criteria derived from the information in *RECS.* DOE further emphasizes that its approach does not assume that all purchasers of dishwashers make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). By using this approach, DOE acknowledges the uncertainty inherent in the data and minimizes any bias in the analysis by using random assignment, as opposed to assuming certain market conditions that are unsupported given the available evidence.

First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient products because they are environmentally conscious.[64] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as dishwashers. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they are presented for any given choice scenario.[65] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase, competing demands for funds), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including loss aversion, sensitivity to information salience, and other forms of bounded rationality. Thaler, who won the Nobel Prize in Economics in 2017 for his contributions to behavioral economics, and Sunstein point out that these behavioral factors are strongest when the decisions are complex and infrequent, when feedback on the decision is muted and slow, and when there is a high degree of information asymmetry.[66] These characteristics describe almost all purchasing situations of appliances and equipment, including dishwashers. The installation of a new dishwasher is done very infrequently. Additionally, it would take at least one full year for any impacts on operating costs to be fully apparent. Further, if the purchaser of the dishwasher is not the entity paying the energy costs (*e.g.,* a tenant), there may be little to no feedback on the purchase. Additionally, there are systematic market failures that are likely to contribute further complexity to how products are chosen by consumers, as explained in the following paragraphs.

The first of these market failures—the split-incentive or principal-agent problem. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split incentive problems in the case of rental properties where the landlord makes the choice of what dishwasher to install, whereas the renter is responsible for paying energy bills. In addition to the split-incentive problem, there are other market failures that are likely to affect the choice of dishwasher efficiency made by consumers. Davis and Metcalf[67] conducted an experiment

[64] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' Energy Policy, 39(3), 1450–1458. (Available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (last accessed Feb. 15, 2022).

[65] Id.

[66] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[67] Davis, L.W., and G.E. Metcalf (2016): ''Does better information lead to better choices? Evidence from energy-efficiency labels,'' *Journal of the*

demonstrating that the nature of the information available to consumers from EnergyGuide labels posted on air conditioning equipment results in an inefficient allocation of energy efficiency across households with different usage levels. Their findings indicate that households are likely to make decisions regarding the efficiency of the climate control equipment of their homes that do not result in the highest net present value for their specific usage pattern (*i.e.,* their decision is based on imperfect information and, therefore, is not necessarily optimal).

In part because of the way information is presented, and in part because of the way consumers process information, there is also a market failure consisting of a systematic bias in the perception of equipment energy usage, which can affect consumer choices.

These market failures affect a sizeable share of the consumer population. A study by Houde [68] indicates that there is a significant subset of consumers that appear to purchase appliances without taking into account their energy efficiency and operating costs at all. However, the literature is not specific to dishwashers.

The existence of market failures in the residential sector is well supported by the economics literature and by a number of case studies. If DOE developed an efficiency distribution that assigned dishwasher efficiency in the no-new-standards case solely according to energy and water use or economic considerations such as LCC or PBP, the resulting distribution of efficiencies within the household sample would not reflect any of the market failures or behavioral factors mentioned previously. DOE thus concludes such a distribution would not be representative of the dishwasher market. Further, even if a specific household is not subject to the market failures, the purchasing decision of dishwasher efficiency can be highly complex and influenced by a number of factors not captured by the information available in the *RECS* samples. These factors can lead to households choosing a dishwasher efficiency that deviates from the efficiency predicted using only energy and water use or economic considerations such as LCC or PBP (as calculated using the information from *RECS*). However, DOE intends to investigate this issue further, and it welcomes suggestions as to how it might improve its assignment of appliance efficiency in its analyses.

DOE seeks data on the no-new-standards case efficiency distribution for the compact-size product class, and the efficiency distribution projection for both the standard-size and the compact-size product classes during the analysis period (2027–2056).

9. Payback Period Analysis

The PBP is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ‘‘simple PBP’’ because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[69] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

Total shipments for dishwashers are developed by considering the demand from replacements for units in stock that fail and the demand from first-time owners (‘‘FTOs’’), which are the households without existing dishwashers. DOE calculated shipments due to replacements using the retirement function developed for the LCC analysis and historical data from AHAM. DOE estimated the ratio of households that would become FTOs each year based on the historical housing stock data, the estimated shipments of replacement units and the estimated shipment to FTOs. DOE calculated shipments of FTOs by multiplying the forecasted housing stock by the annualized ratio of existing households without a dishwasher that would purchase this product over the period 2027–2056, based on the housing stocks from *AEO 2022.* See chapter 9 of the NOPR TSD for details.

AHAM commented that more dishwashers meet ENERGY STAR V. 6.0 criteria now than during the last energy conservation standards rulemaking. (AHAM, No. 26 at p. 2) For this NOPR analysis, DOE used the CCD for dishwashers and noted a shift in the models now meeting the ENERGY STAR V. 6.0 criteria than for the January 2022 Preliminary Analysis. DOE also estimated the market share for compact-size dishwashers at 2 percent based on the information obtained from manufacturers.

DOE considers the impacts on shipments from changes in product purchase price associated with higher energy efficiency levels using a price elasticity. DOE employed a price elasticity of -0.45 in its shipments model.[70] The market impact is defined as the difference between the product of price elasticity of demand and the change in price due to a standard level.

DOE seeks comment on the approach and inputs used to develop no-new-standards case shipments projection.

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.[71] (‘‘Consumer’’ in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the TSLs considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of

Association of Environmental and Resource Economists, 3(3), 589–625. (Available at: *www.journals.uchicago.edu/doi/full/10.1086/686252*) (last accessed Feb. 15, 2022).

[68] Houde, S. (2018): ‘‘How Consumers Respond to Environmental Certification and the Value of Energy Information,’’ *The RAND Journal of Economics,* 49 (2), 453–477 (Available at: *onlinelibrary.wiley.com/doi/full/10.1111/1756-2171.12231*) (last accessed Feb. 15, 2022).

[69] 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.

[70] Fujita, K. (2015) Estimating Price Elasticity using Market-Level Appliance Data. Lawrence Berkeley National Laboratory, LBNL–188289.

[71] The NIA accounts for impacts in the 50 states.

dishwashers sold from 2027 through 2056.

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

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses point values (as opposed to probability distributions) as inputs.

Table IV.14 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.14—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2027.
Efficiency Trends	*No-new-standards case:* fixed efficiency distribution with no annual improvements. *Standards cases:* "Roll up" equipment to meet potential efficiency level.
Annual Energy Consumption per Unit	Calculated for no-new-standards case and each TSL based on inputs from energy use analysis.
Total Installed Cost per Unit	Calculated for no-new-standards case and each TSL based on inputs from the LCC analysis. Incorporated projection of future product prices based on historical data.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy and Water Price Trends	*AEO 2022* projections (to 2050) and constant value thereafter. Historical Water CPI extrapolated projection to 2050 and constant value thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO 2022.*
Discount Rate	3 percent and 7 percent.
Present Year	2022.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard.

To project the trend in efficiency absent amended standards for dishwashers over the entire shipments projection period, DOE used the shipments-weighted standby power ("SWSP") as a starting point. DOE assumed that the shipment weighted efficiency would not increase annually for the dishwasher product classes.

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 in 2027. In the year of compliance, 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 and Water Savings

The national energy and water savings analysis involves a comparison of national energy consumption of the considered products between each TSL and the case with no new or amended energy conservation standards. DOE calculated the national energy and water consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy and water consumption (also by vintage). DOE calculated annual NES and NWS based on the difference in national energy and water 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 *AEO 2022.* Cumulative energy and water savings are the sum of the NES and NWS for each year over the timeframe of the analysis.

In the NES and NWS analysis DOE accounted for the possible increase in energy and water use from handwashing dishes for those households that would not purchase a replacement dishwasher due to the higher purchase cost under the proposed standards. However, these energy and water use costs may be overestimated if, for example, households instead keep their current dishwasher longer than they otherwise would, instead use disposable plates and utensils, or are those households that use their dishwasher less frequently. Furthermore, for those households that still would forgo a replacement dishwasher, DOE did not account for the value of time required for handwashing. Consistent with an economic analysis responsive to E.O. 12866, DOE seeks comments and publicly-available data to improve its estimation of how the proposed standards may affect the rate at which dishwashers are replaced, and therefore the estimates of overall energy and water use, and to evaluate other potential effects on households that would no longer own a dishwasher. DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards, including dishwashers.

AHAM commented that energy conservation standards beyond EL 1 will cause rebound consumer behavior, such as running the dishwasher more than once to reach the desired cleanliness, re-rinsing dishes before placing them in the dishwasher, or handwashing, that undercuts projected energy and water savings. AHAM added that DOE should not adopt energy conservation standards that could make it less likely consumers will purchase or use their efficient dishwashers. (AHAM, No. 26 at p. 11) DOE has not found any evidence that the proposed standards would be likely to cause the types of consumer behavior suggested by AHAM. As discussed in section IV.B of this document, DOE has initially determined that the technology options likely to be used to meet the proposed standards would not have a significant adverse impact on the utility of the product to subgroups of consumers.

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 NIA 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 [72] that EIA uses to prepare its *AEO.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed dishwasher price trends based on historical PPI data. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2056, which is the end date of the projection period, the average dishwasher price is projected to drop 25.1 percent relative to 2021. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for dishwashers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a low price decline case based on the combined PPI series of ''all other miscellaneous household appliances'' and ''primary products of major household appliance manufacturing'' from 2009 to 2021; and, (2) a high price decline scenario based on the same PPI series from 1988 to 2008, which shows a faster price decline than the full time series between 1988–2021. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C 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 residential energy price changes in the Reference case from *AEO 2022,* which has an end year of 2050. To estimate price trends after 2050, the 2050 value was used for all years. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO 2022* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10D of the NOPR TSD.

AHAM commented that DOE has never provided a justification for the assumption it uses that operating costs play no effect on consumer choice for dishwashers. Further, AHAM stated that the current LCC model does not address key issues affecting consumer economics for dishwashers, noting that consumer costs and benefits for dish cleaning are related not so much to the economics of running a dishwasher as they are to the broader differences in methods used to clean dishes whether it be washing by hand, pre-rinsing and then using a dishwasher, or using a dishwasher without pre-rinsing. (AHAM, No. 26 at pp. 7–8)

DOE forecasted an initial drop in dishwasher shipments in response to an increase in purchase price attributable to potential standards-related efficiency increases. DOE assumed that those consumers who forgo buying a dishwasher because of the higher purchase price would then wash their dishes by hand, and DOE estimated the energy and water use of washing dishes by hand (see chapter 10 of the NOPR TSD for details).[73] DOE did not account for differences in handwashing and pre-rinsing dishes among the considered efficiency levels due to the lack of data regarding consumer behavior.

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.[74] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates

[72] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581 (2009), October 2009. Available at *www.eia.gov/forecasts/aeo/* (last accessed October 22, 2021).

[73] While TSD Chapter 9 includes information on projected shipments, DOE did not estimate the number of households that would forgo a dishwasher under a standards scenario. However, the analysis projects a 0.01 percent reduction in shipments over 30 years.

[74] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed November 21, 2022).

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) low-income households and (2) senior-only households. The analysis used subsets of the *RECS 2020* sample composed of households that meet the criteria for the two subgroups and shows the percentages of those both negatively and positively impacted. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

Samsung stated that the 2021 LBNL survey showed that as household income declines, higher value is placed on reductions in energy consumption and low-income and the senior-only households are more likely to prefer all energy efficiency improvement options compared to the national average. (Samsung, No. 22 at p. 2)

As stated above, DOE determines the extent to which identifiable subgroups of consumers are disproportionately affected by a new or amended national standard. In this NOPR analysis, DOE analyzed the impacts of the considered standard levels on low-income households and senior-only households.

AHAM stated that *RECS 2015* data shows only 67 percent of U.S. households have a dishwasher, and the percentage decreases among low-income households. AHAM commented that promoting dishwasher ownership and policies that increase dishwasher ownership in low-income communities will save those consumers money on energy and water bills, while also achieving water and energy savings. (AHAM, No. 26 at p. 6) AHAM commented that the existing LCC model is not relevant and does not address key issues affecting consumer economics. AHAM commented that DOE should carefully assess the consumer economic effects on several subgroups: Low-income households, including the effects of lost time used in handwashing versus using a dishwasher; rural households, including an accurate measure of the cost to the consumer of water and sewer; households with dishwashers that do not use them or use them only infrequently, to determine why they do not use a dishwasher and what can be done to increase dishwasher use; and households without dishwashers, to determine why they do not currently own a dishwasher and what can be done to make dishwasher access or ownership possible. (AHAM, No. 26 at pp. 7–8)

For the NOPR, DOE conducted an analysis of the impact of potential dishwasher standards on low-income households. DOE did not evaluate rural households as a subgroup, as it does not expect that these households would see a disproportionate impact from potential standards. However, DOE included estimates of well water and septic costs in its calculations for rural households and households using well water and septic systems. DOE did not include households with dishwashers that do not use them or use them only infrequently or households without dishwashers as consumer subgroups, as the type of assessment suggested by AHAM is outside the scope of the analysis that DOE does to evaluate the economic justification of potential standards.

1. Low-Income Households

Low-income households are significantly more likely to be renters or to live in subsidized housing units, compared to households that are not low-income. In these cases, the landlord purchases the equipment and may pay the energy bill as well.

For this NOPR analysis, DOE used *RECS* data to divide low-income households into three sub-subgroups: (1) renters who pay the energy bill, (2) renters who do not pay the energy bill, and (3) homeowners.[75] For large appliance such as dishwashers, renters are unlikely to be purchasers. Instead, the landlord would bear the cost, and some or none of the cost could get passed on to the renter. Renters who pay the energy bill would receive the energy cost savings from higher-efficiency appliances. This disaggregation allows DOE to determine whether low-income households are disproportionately affected by an amended energy conservation standard in a more accurate manner. Table IV.15 shows the distribution of low-income household dishwasher users with respect to whether they rent or own and whether they pay the energy bill.

TABLE IV.15—CHARACTERIZATION OF LOW-INCOME HOUSEHOLDS IN THE SAMPLE FOR DISHWASHERS

Type of household *	Percentage of low-income sample (standard-size dishwashers)	Impact of higher efficiency on energy and water bills	Impact of first cost
Renters—Pay for Energy Bill **	48	Full/Partial savings	None.
Renters—Do Not Pay for Energy Bill **	6	None	None.
Owners	46	Full/Partial savings †	Full.

* *RECS* lists three categories: (1) Owned or being bought by someone in your household (classified as "Owners" in this table); (2) Rented (classified as "Renters" in this table); (3) Occupied without payment of rent (also classified as "Renters" in this table). Renters include occupants in subsidized housing including public housing, subsidized housing in private properties, and other households that do not pay rent. *RECS* does not distinguish homes in subsidized or public housing.

** *RECS* lists four categories for each of the fuels used by a household: (1) Household is responsible for paying for all used in this home; (2) All used in this home is included in the rent or condo fee; (3) Some is paid by the household, some is included in the rent or condo fee; and (4) Paid for some other way. "Do Not Pay for Energy Bill" includes only category (2). Partial energy bill savings would occur in cases of category (3).

*** It is assumed that incremental costs usually are not included in rent increases, but some portion of the incremental cost could be passed on in the rent over time.

† It is assumed that in the cases where buildings share electricity bills, owners would receive only partial benefit from savings.

Whirlpool stated that with amended standards beyond EL 1, purchasing a new dishwasher may become out of reach for many low-income households, including those representing disadvantaged communities, or present

[75] The energy bill includes fuel types of electricity, natural gas, or propane consumed by a household.

them with options that do not help them save energy and water or end up costing them even more over the life of the appliance. Whirlpool stated that this would keep less efficient dishwashers in the stock or increase the time spent on household chores. Whirlpool further stated that making dishwashers less affordable will not serve to increase the overall household penetration of dishwashers. (Whirlpool, No. 21 at pp. 5–6) AHAM commented that amended energy conservation standards beyond EL 1 are not justified because they will disproportionately and negatively affect low-income consumers, drive unintended consumer behaviors that negate predicted savings, and lead to consumer dissatisfaction with performance due to unavoidable performance declines with currently available technology. (AHAM, No. 26 at p. 3) AHAM also stated that lower-income consumers cannot pay more for a more efficient dishwasher and are less likely to own a dishwasher, and some consumers who cannot afford to purchase a new appliance may instead purchase a used, less efficient appliance, or more likely, forego what is seen as a discretionary purchase and, instead hand wash their dishes. As a result, AHAM contended that these consumers will use significantly more water and energy and spend more money on their water and electricity bill than other population segments, which is contrary to environmental justice goals. (AHAM, No. 26 at p. 6)

As shown in section V.B.1.b of this document, the proposed standard for standard-size dishwashers yields an LCC savings of $21 for low-income dishwasher users, and the percent of low-income dishwasher consumers experiencing a net LCC cost under the proposed standards is smaller than in the full LCC sample. The majority of low-income households using dishwashers are renters who do not have to pay the total cost of higher-efficiency dishwashers. While some of the incremental cost of a standards-compliant dishwasher could get passed on in rent, this would happen over time and would be far less than the energy and water cost savings received by renters who pay the energy and water bills. The alternatives to buying a new dishwasher mentioned by Whirlpool and AHAM are possible options for non-renter households, but there is insufficient information to evaluate the extent to which they might occur or the consequences with respect to energy and water use.

As discussed in section IV.H.2, DOE accounted for how higher product prices attributable to the proposed standards may reduce purchases of new dishwashers, and further assumed that households that would no longer purchase a dishwasher would instead handwash their dishes. Furthermore, section IV.H.2 describes how households may alternatively respond to higher dishwasher prices, and welcomes comments providing data and analysis to improve is evaluation of these alternative responses. DOE did not account for how higher dishwasher prices may lead to low-income households forgoing the purchase or no longer having a dishwasher and the potential consequences. DOE welcomes comments specific to how low-income households may respond to higher dishwasher prices and in particular forgoing the purchase of a new dishwasher, which will allow DOE to improve its analysis, perhaps by bounding potential outcomes, of the potential impact of more stringent standards on these households if finalized. Also, the results of this analysis on consumers is uncertain as DOE does not account for potential differences in the marginal cost of energy or water for low-income households relative to the general population. For example, there may be differences in energy prices faced by these households due to reduced marginal electricity tariffs offered to lower income households prices or other programs that specifically reduce the energy or water expenses borne by these households (*e.g.,* LIHEAP). DOE welcomes comment on how it may account for energy and water prices faced by low income, as well as senior, households.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of dishwashers and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows; the INPV; investments in research and development (''R&D'') and manufacturing capital; and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, MPCs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM output is the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital. 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 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 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 dishwasher manufacturing industry based on the market and technology assessment and publicly-available information. This included a top-down analysis of dishwasher 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 dishwasher manufacturing industry, including company filings of Form 10–Ks from the SEC,[76] corporate annual reports, the U.S. Census Bureau's *Annual Survey of*

[76] U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.* Available at: *www.sec.gov/edgar/search/* (last accessed September 27, 2022).

Manufactures (''*ASM*''),[77] and reports from Dun & Bradstreet.[78]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of dishwashers 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 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 amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the NOPR publication year) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of dishwashers, DOE used a real discount rate of 8.5 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 amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis and shipments analysis, and information used in the January 2022 Preliminary Analysis. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. For a complete description of the MPCs, see chapter 5 of the NOPR TSD or section IV.C of this document.

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 chapter 9 of the NOPR TSD or section IV.G of this document for additional details.

c. Capital and Product Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) capital conversion costs; and (2) product conversion costs. Capital conversion costs are investments in property, plant, and product necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. 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.

DOE relied on information derived from manufacturer interviews, the engineering analysis, and product teardowns to evaluate the level of capital and product conversion costs manufacturers would likely incur at the various efficiency levels. During interviews, DOE asked manufacturers to estimate the capital conversion costs to meet the various efficiency levels. This feedback was compared to findings from the engineering analysis to determine the validity of investment levels. DOE also asked manufacturers to estimate the redesign effort, engineering resources, and marketing expenses required at various efficiency levels to quantify the product conversion costs. Based on manufacturer feedback, DOE also estimated ''re-flooring'' costs associated with replacing obsolete display models in big-box stores (*e.g.,* Lowe's, Home Depot, Best Buy) due to higher standards. Some manufacturers stated that with a new product release, big-box

[77] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S (2020).'' Available at: *www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html* (last accessed September 27, 2022).

[78] The Dun & Bradstreet Hoovers login is available at: *app.dnbhoovers.com* (last accessed September 27, 2022).

retailers discount outdated display models and manufacturers share any losses associated with discounting the retail price. The estimated re-flooring costs for each efficiency level were incorporated into the product conversion cost estimates, as DOE modeled the re-flooring costs as a marketing expense. DOE also estimated industry costs associated with the new appendix C2, as finalized in the January 2023 TP Final Rule. Among other updates, appendix C2 contains provisions for a minimum cleaning index threshold to validate the regulated test cycle. At each efficiency level, DOE included the costs associated with re-rating compliant basic models in accordance with appendix C2. 88 FR 3234, 3271–2. Based on manufacturer feedback, DOE expects some manufacturers may incur one-time costs if their current testing laboratories are at capacity and additional laboratory space or test stations are required. DOE interviewed manufacturers representing approximately 90 percent of industry shipments. In interviews, multiple manufacturers provided estimates for the expected upfront capital costs associated with implementing the cleaning performance test (*e.g.,* additional test stations, equipment upgrades for existing stations, building modifications, etc.) DOE considered these costs in its conversion cost estimates, as appendix C2 would go into effect at the time when compliance is required for any amended energy conservation standards.

Manufacturer feedback on conversion costs was aggregated to protect confidential information. DOE then scaled up the aggregate capital and product conversion cost feedback from interviews to estimate total industry conversion costs.

d. Manufacturer Markup Scenarios

MSPs include manufacturer production costs 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 product class and efficiency level. For the MIA, DOE modeled two standards-case scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a preservation of gross margin percentage scenario; (2) a tiered scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash-flow impacts. The industry cash flow analysis results in section V.B.2.a of this document present the impacts of the upper and lower bound scenarios on INPV.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' across all efficiency levels, which assumes that following amended standards, manufacturers would be able to maintain the same amount of profit as a percentage of revenue at all efficiency levels within a product class. As production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. Based on publicly-available financial information, results from the as well as comments from manufacturer interviews, DOE assumed average gross margin percentages of 19.4 percent for both standard-size and compact-size product classes.[79] Manufacturers noted that this scenario represents the upper bound of the dishwasher industry's profitability in the standards case because manufacturers can fully pass on additional costs due to standards to consumers.

The tiered scenario starts with the three tiers of manufacturer markups wherein higher efficiency products have higher markup than low efficiency products. In the no-new-standards case, the three tiers are baseline efficiency, ENERGY STAR V. 6.0, and 2022 ENERGY STAR Most Efficient qualification criteria. In the standards case, DOE models the breadth of manufacturers' portfolio of products shrinking and amended standards resulting in higher-tier products moving to lower tiers. As a result, higher efficiency products that previously commanded the ENERGY STAR and 2022 ENERGY STAR Most Efficient manufacturer markups are assigned the baseline and ENERGY STAR markups, respectively. This scenario models reflects a concern about product commoditization at higher efficiency levels as efficiency differentiators are eliminated.

DOE requests comment on whether industry expects a compression of markups due higher standards, as reflected in the tiered scenario for manufacturer markups.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 90 percent of industry shipments. Participants included domestic-based and foreign-based original equipment manufacturers (''OEMs'') with a range of different product offerings and market shares.

In interviews, DOE asked manufacturers to describe their major concerns regarding this rulemaking. 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 NDAs, so DOE does not document these discussions in the same way that it does public comments.

a. Test Procedure and Cleaning Index

In interviews, manufacturers expressed two main concerns about the proposed test procedure and cleaning index threshold as it relates to potential amended energy conservation standards.[80] First, multiple manufacturers asserted that the repeatability and reproducibility of the cleaning performance test varies between testing laboratories could lead to unintentional non-compliance (*i.e.,* a product meeting the cleaning performance threshold in one laboratory, but not meeting it for enforcement testing). To help guard against unintentional non-compliance, these manufacturers stated that they would need to invest in extensive technician training and conduct additional rounds of cleaning performance testing. Furthermore, these manufacturers suggested that they would need to potentially update product designs or build in safety margins to ensure that their products consistently test above the minimum cleaning index threshold. Second, several manufacturers questioned whether the cleaning index score correlates to consumer satisfaction. Some manufacturers noted that they have developed internal test methods to assess and improve the cleaning performance of their products, which they favor over DOE's proposed cleaning performance test. Therefore, they stated that imposing a cleaning index threshold could limit their ability to conduct their preferred cleaning performance tests due to limited laboratory space and personnel.

One manufacturer supported implementing a cleaning performance threshold. A different manufacturer supported the concept of the cleaning performance threshold, but encouraged DOE to continue to work with manufacturers to improve the cleaning

[79] The gross margin percentage of 19.4 percent is based on a manufacturer markup of 1.24.

[80] The test procedure final rule had not been published at the time of the interviews. DOE finalized its proposal in the January 2023 TP Final Rule, including establishing a minimum cleaning index threshold of 70 as a condition of a valid test cycle in new appendix C2.

test so that it is repeatable and reproducible.

b. Balancing Dishwasher Attributes

Several manufacturers expressed concerns that the reduction of energy and water usage beyond EL 1 could lead to longer cycle times, more variation in dish cleanliness, and diminished drying of dishes. Manufacturers emphasized that energy and water use are interconnected to other key attributes of dishwashers that affect customer satisfaction. Manufacturers noted that these concerns about additional product attributes and consumer satisfaction are further exacerbated at max-tech.

4. Discussion of MIA Comments

In response to the January 2022 Preliminary Analysis, AHAM commented that shipments are currently concentrated at EL 1, and the lack of shipments above EL 1 indicates significant investment would be necessary to comply with standards above EL 1. (AHAM, No. 26 at p. 5) Whirlpool stated that the significant redesign and investment necessary to meet amended standards beyond EL 1 may lead to a corresponding significant increase in product cost that would affect low-income consumers. (Whirlpool, No. 21 at p. 5) AHAM commented that the cost effectiveness of technology options and the incremental cost to achieve lower energy use must be assessed within a product platform. AHAM noted that changes to the dishwasher chassis size require expensive changes to tooling and may change the fundamental product manufacturing approach. AHAM suggested that technology options should only be considered if they can be physically accommodated within the product chassis as there is only so much room in a product that has a standard cutout and fits under the countertop. (AHAM, No. 26 at p. 15)

DOE recognizes that the majority of the domestic dishwasher shipments are currently at EL 1. To account for the level of redesign and investment required to meet amended standards above EL 1, DOE relied on manufacturer feedback and the engineering analysis to assess industry conversion costs at each analyzed efficiency level. As noted in section IV.J.3 of this document, DOE interviewed manufacturers representing approximately 90 percent of industry shipments. In interviews, manufacturers discussed the investments required to redesign their various product platforms and DOE incorporated those costs into its analysis. See section IV.J.2.c of this document for a description of the conversion cost methodology and section V.B.2.a of this document for the estimated product and capital conversion costs at the various analyzed standard levels. Regarding the impact on low-income consumers, section IV.I and section V.B.1.b of this document provides additional information on the consumer subgroup analysis of low-income consumers. As for changes in chassis size, DOE notes that the engineering analysis did not consider design options that would necessitate a width greater than the typical standard-size dishwasher width of 24 inches.

AHAM urged DOE to consider alternative approaches to cumulative regulatory burden. AHAM encouraged DOE to incorporate the financial results of the cumulative regulatory burden analysis into the MIA, stating that this could be done by adding the combined cost of complying with multiple regulations into the product conversion costs in GRIM. (AHAM, No. 26 at p. 30) AHAM noted other regulations impact dishwasher manufacturers such as residential and commercial clothes washers, residential clothes dryers, consumer refrigerator/freezers, miscellaneous refrigeration products, cooking products, room air conditioners, dehumidifiers, portable air conditioners, and electric motors. (AHAM, No. 26 at p. 31) Additionally, AHAM requested that DOE include the cost of monitoring test procedure and energy conservation standard rulemakings in its rulemaking analyses. (*Id.*)

If DOE were to combine the conversion costs from multiple regulations, as requested, it would be appropriate to match the combined conversion costs against combined revenues of the regulated products. DOE is concerned that combined results would make it more difficult to discern the direct impact of the amended standard on covered manufacturers.

Regarding the ongoing DOE rulemakings AHAM mentioned, DOE has not proposed amended energy conservation standards or compliance dates for some of the products identified. Table V.11 details the rulemakings and expected conversion expenses of Federal energy conservation standards, such as consumer clothes dryers, residential clothes washers, and refrigerators, refrigerator-freezers, and freezers, affecting dishwasher OEMs. DOE will reassess and consider all relevant final rules contributing to cumulative regulatory burden in any subsequent analysis.

To consider the costs of monitoring test procedure and energy conservation standard rulemakings, DOE requests AHAM provide the costs of monitoring, which would be independent from the conversion costs required to adapt product designs and manufacturing facilities to an amended standard, for DOE to determine whether these costs would materially affect the analysis. In particular, a summary of the job titles and annual hours per job title at a prototypical company would allow DOE to construct a detailed analysis of AHAM's monitoring costs.

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 power sector emissions of CO_2, NO_X, SO_2, and Hg uses marginal emissions factors that were derived from data in *AEO 2022,* as described in section IV.K of this document. Details of the methodology are described in the appendices to chapters 13 and 15 of the NOPR TSD.

Power sector emissions of CO_2, CH_4 and N_2O are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.[81] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per megawatt-hours (''MWh'') or million British thermal units (''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 NIA.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO 2022,* which incorporates the projected

[81] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

impacts of existing air quality regulations on emissions. *AEO 2022* generally represents current legislation and environmental regulations, including recent government actions that were in place at the time of preparation of *AEO 2022,* including the emissions control programs discussed in the following paragraphs.[82]

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.[83] *AEO 2022* 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).[84] 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 implementation 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 *AEO 2022.*

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, NOx emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NOx emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO 2022* data to derive NO_X emissions factors for the group of States not covered by CSAPR.[85]

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 *AEO 2022,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this NOPR.

DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by

[82] For further information, see the Assumptions to *AEO 2022* 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 October 15, 2021).

[83] 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), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

[84] In Sept. 2019, the D.C. Court of Appeals remanded the 2016 CSAPR Update to EPA. In April 2021, EPA finalized the 2021 CSAPR Update which resolved the interstate transport obligations of 21 states for the 2008 ozone NAAQS. 86 FR 23054 (April 30, 2021); *see also,* 86 FR 29948 (June 4, 2021) (correction to preamble). The 2021 CSAPR Update became effective on June 29, 2021. The release of AEO 2022 in February 2021 predated the 2021 CSAPR Update.

[85] *See* footnote 41.

another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* ''SC–GHGs'') using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O, and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHGs estimates presented here were developed over many years, using transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, that included the DOE and other executive branch agencies and offices was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (''SC–CO_2'') values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (''IAMs'') that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016, the IWG published estimates of the social cost of methane (''SC–CH_4'') and nitrous oxide (''SC–N_2O'') using methodologies that are consistent with the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten *et al.*[86] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).[87] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O.13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United

[86] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH4 and N2O mitigation benefits consistent with the US Government's SC–CO2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[87] 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.

States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,[88] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3 percent and 7 percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7 percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented in this analysis.

To calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5 percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed several options, including ''presenting all discount rate combinations of other costs and benefits with [SC–GHG] estimates.''

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with the above assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and were subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the 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.

[88] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government (last accessed April 15, 2022). *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf;* Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2013 (last accessed April 15, 2022). *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016 (last accessed January 18, 2022). *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016 (last accessed January 18, 2022). *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[89] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this NOPR 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. of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this NOPR were based on the values in the IWG's February 2021 TSD. Table IV.16 shows the updated sets of SC–CO_2 estimates from the IWG's TSD in 5-year increments from 2020 to 2050. The full set of annual values used that DOE is presented in appendix 14A of the NOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate include all four sets of SC–CO_2 values, as recommended by the IWG.[90]

TABLE IV.16—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
2027	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2021$.[91] 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 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

AHAM cautioned against DOE using the social cost of carbon and other monetization of emissions reductions benefits in its analysis of the factors EPCA requires DOE to balance to determine the appropriate standard noting that the values are constantly subject to change. AHAM stated that while it may be acceptable for DOE to continue its current practice of examining the social cost of carbon and monetization of other emissions reductions benefits as informational so long as the underlying interagency analysis is transparent and vigorous, the monetization analysis should not impact the TSLs DOE selects as a new or amended standard. (AHAM, No. 26 at p. 15) As stated in section III.F.1.f of this document, DOE accounts for the environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, when considering the need for national energy conservation. (See 42 U.S.C. 6295(o)(2)(B)(i)(IV)) In addition, Executive Order 13563, which was re-affirmed on January 21, 2021, stated that each agency must, among other things: ''select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental,

[89] 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/.*

[90] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

[91] 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).

public health and safety, and other advantages; distributive impacts; and equity).'' For these reasons, DOE includes monetized emissions reductions in its evaluation of potential standard levels. As previously stated, however, DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this NOPR were based on the values developed for the February 2021 TSD.[92] Table IV.17 shows the updated sets of SC–CH_4 and SC- N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE IV.17—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5%	3%	2.5%	3%	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2027	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2021$ 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. See chapter 13 of the NOPR TSD for the annual emissions reduction. See appendix 14A of the NOPR TSD for the annual SC–CH_4 and SC–N_2O values.

2. Monetization of Other Air Pollutants

For the NOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[93] 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 2027, 2030, 2035, 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 2027 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 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 *AEO 2022.* 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 *AEO 2022* 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 production and non-production employees of manufacturers of the products subject to standards.[94] The

[92] Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021. *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf?source=email.*

[93] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors. www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[94] As defined in the U.S. Census Bureau's 2016 *Annual Survey of Manufactures,* production workers include ''Workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial, guard services, product development, auxiliary production for plant's own use (*e.g.,* power plant), record keeping, and other closely associated services (including truck drivers delivering ready-mixed concrete)'' Non-production workers are defined as ''Supervision above line-supervisor level, sales

Continued

MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's 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.[95] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[96] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this proposed rule. Therefore, DOE used ImSET only to generate results for near-term timeframes, 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 dishwashers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for dishwashers, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the product classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set. DOE analyzed the benefits and burdens of five TSLs for dishwashers. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for dishwashers. TSL 5 represents the max-tech energy efficiency for both product classes and corresponds to EL 4 for standard-size dishwashers and EL 2 for compact-size dishwashers. TSL 4 is the TSL that maximizes net benefits at a 3% discount rate; this TSL represents the highest efficiency levels providing positive LCC savings, which comprises the gap-fill efficiency level between the current ENERGY STAR V. 6.0 level and ENERGY STAR Most Efficient level (EL 2) for standard-size dishwashers and max-tech efficiency level (EL 2) for compact-size dishwashers. TSL 3 maximizes net benefits at a 7% discount rate; this TSL comprises the gap-fill efficiency level between the current ENERGY STAR V. 6.0 level and ENERGY STAR Most Efficient level (EL 2) for standard-size dishwashers and the current ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. TSL 2 comprises the current ENERGY STAR V. 6.0 level (EL 1) for standard-size dishwashers and the max-tech efficiency level (EL 2) for compact-size dishwashers. TSL 1 represents EL 1 across both product classes and the current ENERGY STAR V. 6.0 level.

(including a driver salesperson), sales delivery (truck drivers and helpers), advertising, credit, collection, installation, and servicing of own products, clerical and routine office functions, executive, purchasing, finance, legal, personnel (including cafeteria, *etc.*), professional and technical.''

[95] See U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf* (last accessed October 21, 2021).

[96] 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.

TABLE V.1—TRIAL STANDARD LEVELS FOR DISHWASHERS

Product class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
	Maximum allowable estimated annual energy use (kWh/year) *				
PC 1: Standard-size dishwasher	232	232	223	223	193
PC 2: Compact-size dishwasher	174	124	174	124	124

* Based on appendix C2.

DOE constructed the TSLs for this NOPR to include ELs representative of ELs with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative ELs provided for greater distinction between the TSLs. While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis and included the efficiency levels with positive LCC savings in the TSLs.[97]

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on dishwashers consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, water prices, water price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the default case LCC and PBP results for the TSLs considered for both product classes. The LCC and PBP results based on the incremental MPC sensitivity cases are presented appendix 8D of the NOPR TSD. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second of each pair of tables, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost. DOE does not include price-sensitive consumers who do not purchase new dishwashers in the percent of consumers that experience a net cost. DOE seeks comment and publicly-available data to improve its analysis of the consumer effects of the proposed standards for dishwashers. DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards, including dishwashers.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR PC 1: STANDARD-SIZE DISHWASHERS

TSL	EL	AEU * (kWh/yr)	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	263	$477	$44	$590	$1,067		15.2
1,2	1	232	492	39	558	1,050	3.0	15.2
3,4	2	223	492	38	542	1,034	2.4	15.2
5	4	193	612	33	536	1,148	12.4	15.2

* Based on the test procedure assumption of 184 cycles per year.

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 1: STANDARD-SIZE DISHWASHERS

TSL	EL	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1,2	1	20	3
3,4	2	17	3
5	4	(96)	94

[97] Efficiency levels that were analyzed for this NOPR are discussed in section IV.C.3 of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR PC 2: COMPACT-SIZE DISHWASHERS

TSL	EL	AEU* (kWh/yr)	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	191	$532	$32	$468	$1,000		15.2
1,3	3	174	532	30	438	969	0.0	15.2
2,4,5	4	124	590	22	378	968	5.7	15.2

* Based on the test procedure assumption of 184 cycles per year.
Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 2: COMPACT-SIZE DISHWASHERS

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost (%)
1,3	1	30	0
2,4,5	2	6	49

* 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 low-income households and senior-only households. Table V.6 and Table V.7 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for both product classes. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.6—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 1: STANDARD-SIZE DISHWASHERS

	Low-income households ‡	Senior-only households §	All households
Average LCC Savings* (2021$):			
TSL 1–2	36	6	20
TSL 3–4	20	14	17
TSL 5	(28)	(108)	(96)
Payback Period (years):			
TSL 1–2	1.3	3.7	3.0
TSL 3–4	1.0	2.9	2.4
TSL 5	5.5	14.9	12.4
Consumers with Net Benefit (%):			
TSL 1–2	4	2	3
TSL 3–4	80	87	88
TSL 5	32	4	6
Consumers with Net Cost (%):			
TSL 1–2	2	4	3
TSL 3–4	2	4	3
TSL 5	59	96	94

* The savings represent the average LCC for affected consumers.
‡ Low-income households represent 5.7 percent of all households for this product class.
§ Senior-only households represent 23.2 percent of all households for this product class.

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 2: COMPACT-SIZE DISHWASHERS

	Low-income households ‡	Senior-only households §	All households
Average LCC Savings* (2021$):			
TSL 1,3	33	24	30
TSL 2,4,5	50	(10)	6
Payback Period (years):			
TSL 1,3	0.0	0.0	0.0

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 2: COMPACT-SIZE DISHWASHERS—Continued

	Low-income households ‡	Senior-only households §	All households
TSL 2,4,5	2.6	6.8	5.7
Consumers with Net Benefit (%):			
TSL 1,3	11	12	12
TSL 2,4,5	44	23	30
Consumers with Net Cost (%):			
TSL 1,3	0	0	0
TSL 2,4,5	28	56	49

* The savings represent the average LCC for affected consumers.
‡ Low-income households represent 5.7 percent of all households for this product class.
§ Senior-only households represent 23.2 percent of all households for this product class.

c. Rebuttable Presumption Payback

As discussed in section III.E.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) 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 dishwashers. 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.8 presents the rebuttable-presumption payback periods for the considered TSLs for dishwashers. While DOE examined the rebuttable-presumption criterion, it also considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.8—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	TSL				
	1	2	3	4	5
	(years)				
PC 1: Standard-Size	2.1	2.1	1.8	1.8	9.4
PC 2: Compact-Size	0.0	4.6	0.0	4.6	4.6

* Based on the test procedure assumption of 184 cycles per year.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of dishwashers. 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 amended energy conservation standards. The following tables illustrate the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of dishwashers, as well as the conversion costs that DOE estimates manufacturers of dishwashers would incur at each TSL.

To evaluate the range of cash-flow impacts on the dishwasher industry, DOE modeled two scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) a preservation of gross margin percentage scenario; (2) a tiered scenario, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentage applies a ''gross margin percentage'' of 19.4 percent for both standard-size and compact-size product classes.[98] 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 amended energy conservation standards.

The tiered scenario starts with the three different product manufacturer markups in the no-new-standards case (baseline, ENERGY STAR V. 6.0, and 2022 ENERGY STAR Most Efficient qualification criteria). This scenario models reflects a concern about product commoditization at higher efficiency levels as efficiency differentiators are eliminated and manufacturer markups are reduced. The tiered scenario results in the lower (or larger in magnitude) bound to impacts of potential amended standards on industry.

Each of the modeled scenarios results 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 NOPR publication year through the end of the analysis period (2023–2056). The ''change in INPV'' results refer to the

[98] The gross margin percentage of 19.4 percent is based on a manufacturer markup of 1.24.

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 product 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 amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

TABLE V.9—MANUFACTURER IMPACT ANALYSIS RESULTS FOR DISHWASHERS *

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
INPV	*2021$ Million*	713.6	664.4 to 707.0	657.7 to 701.1	578.7 to 624.1	572.0 to 618.2	305.8 to 371.1
Change in INPV	%		(6.9) to (0.9)	(7.8) to (1.8)	(18.9) to (12.5)	(19.8) to (13.4)	(57.1) to (48.0)
Free Cash Flow (2026).	*2021$ Million*	56.0	51.7	47.8	5.7	1.7	(225.1)
Change in Free Cash Flow (2026).	%		(7.7)	(14.8)	(89.9)	(96.9)	(501.9)
Conversion Costs	*2021$ Million*		12.4	22.4	125.6	135.6	663.7

* Parentheses indicates negative (−) values.

At TSL 1, the standard represents EL 1 across both standard-size and compact-size dishwashers and the current ENERGY STAR V. 6.0 level. The change in INPV is expected to range from −6.9 to −0.9 percent. At this level, free cash flow is estimated to decrease by 7.7 percent compared to the no-new-standards case value of $56.0 million in the year 2026, the year before the standards year. Currently, approximately 93 percent of domestic dishwasher shipments meet the efficiencies required at TSL 1. For standard-size dishwashers, which account for approximately 98 percent of annual shipments, 93 percent of shipments meet the efficiencies required. For compact-size dishwashers, which account for the remaining 2 percent of annual shipments, 87 percent of shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers include implementing electronic controls, soil sensing, multiple spray arms, improved water filters, a separate drain pump, and tub insulation. The design options DOE analyzed for compact-size dishwashers include implementing improved controls. At this level, capital conversion costs are minimal since the majority of products already meet the efficiency levels required. As with all the analyzed TSLs, conversion costs incorporate industry testing costs as manufacturers implement the cleaning performance test and re-rate all their existing, compliant models in accordance with the new appendix C2. 88 FR 3234. DOE expects industry to incur some re-flooring costs associated with standard-size dishwashers as manufacturers redesign baseline products to meet the efficiency levels required by TSL 1. In interviews, manufacturers stated that there are not re-flooring costs associated with compact-size dishwashers as those are typically not on display at big-box stores. DOE estimates capital conversion costs of $0.9 million and product conversion costs of $11.4 million. Conversion costs total $12.4 million.

Under the tiered manufacturer markup scenario, which is discussed in IV.J.2.d of this document, the key driver of impacts to INPV at TSL 1 is the result of margin compression for both standard-size and compact-size dishwashers as manufacturers forfeit premiums and cut into margins as they try to maintain a competitively priced baseline product. Although only a small fraction of products (7 percent of shipments) would need to be redesigned at this level, the margin compression under the tiered scenario has a disproportionately large impact on INPV, since most of the market is ENERGY STAR V. 6.0 compliant in the no-new-standards case.

At TSL 2, the standard represents the current ENERGY STAR V. 6.0 level (EL 1) for standard-size dishwashers and the max-tech efficiency level (EL 2) for compact-size dishwashers. The change in INPV is expected to range from −7.8 to −1.8 percent. At this level, free cash flow is estimated to decrease by 14.8 percent compared to the no-new-standards case value of $56.0 million in the year 2026, the year before the standards year. Currently, approximately 92 percent of domestic dishwasher shipments meet the efficiencies required at TSL 2. As with TSL 1, 93 percent of standard-size dishwasher shipments meet the efficiencies required. For compact-size dishwashers, 21 percent of shipments currently meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers are the same as at TSL 1. The design options analyzed for compact-size dishwashers include implementing the design options at TSL 1 as well as permanent magnet motors, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. The increase in conversion costs from the prior TSL is entirely due to the increased efficiency level required for compact-size dishwashers. At TSL 2, all manufacturers of compact-size countertop dishwashers with 4 or more place settings and in-sink dishwashers with less than 4 place settings would need to redesign their products to meet the efficiencies required, as DOE is not aware of any currently available products in these two configurations that meet TSL 2. Manufacturer feedback and the engineering analysis indicates that redesigning these compact-size configurations to meet max-tech would require significant investment, both in terms of engineering resources and new tooling, relative to the size of the domestic compact-size dishwasher market. While it is technologically feasible for compact-size countertop dishwashers with 4 or more place settings and in-sink dishwashers with less than 4 place settings to meet TSL 2 (max-tech for compact-size dishwashers), manufacturers would need to determine whether the shipments volumes justify the level of investment required. DOE expects industry to incur the same re-flooring costs as at TSL 1. DOE estimates capital conversion costs of $5.9 million and product conversion costs of $16.5 million. Conversion costs total $22.4 million.

Under the tiered manufacturer markup scenario, the key driver of impacts to INPV at TSL 2 is the result of margin compression for both standard-size and compact-size dishwashers as manufacturers forfeit premiums and cut into margins as they try to maintain a competitively priced baseline product. In particular, because TSL 2 sets standards for compact-size dishwashers at max-tech, manufacturers lose their premium markup for high-efficiency compact-size products, contributing to a reduction in future revenues and INPV.

At TSL 3, the standard represents the gap-fill efficiency level between the current ENERGY STAR V. 6.0 level and ENERGY STAR Most Efficient level (EL 2) for standard-size dishwashers and the current ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. The change in INPV is expected to range from −18.9 to −12.5 percent. At this level, free cash flow is estimated to decrease by 89.9 percent compared to the no-new-standards case value of $56.0 million in the year 2026, the year before the standards year. Currently, approximately 11 percent of domestic dishwasher shipments meet the efficiencies required at TSL 3. For standard-size dishwashers, 9 percent of current shipments meet the efficiencies required. As with TSL 1, 87 percent of compact-size dishwasher shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers include implementing the design options at TSL 1 and TSL 2 as well as improved control strategies, which could necessitate product redesign to more closely control water temperature, water fill volumes, *etc.* The design options analyzed for compact-size dishwashers are the same as for TSL 1. The increase in conversion costs from the prior TSL is entirely due to the increased efficiency level required for standard-size dishwashers. In interviews, some manufacturers stated that meeting TSL 3 would involve physical improvements to system elements to enable tighter controls and better design tolerances, while maintaining certain product attributes valued by their consumers. Although manufacturers tended to agree that the key product attributes (in addition to energy and water use and cleaning performance) included drying performance, cycle duration, and noise levels, manufacturers identified different priorities and internal targets for those metrics. One manufacturer noted that maintaining the same normal cycle time across their dishwasher portfolio was a key design parameter, as it was part of their value proposition and marketing material. A different manufacturer emphasized that maintaining drying performance, particularly of plastic dishware, was a key concern for their consumer base. These manufacturers stated that they may need new tooling and some modifications to the assembly line to improve the system elements to meet TSL 3 efficiencies while maintaining these product attributes. DOE expects industry to incur more re-flooring costs compared to TSL 2. DOE estimates capital conversion costs of $68.9 million and product conversion costs of $56.7 million. Conversion costs total $125.6 million.

TSL 3 brings standards for standard-size dishwashers above current ENERGY STAR V. 6.0 levels. Under the tiered scenario, the fraction of products that are eligible for any additional premium markups above baseline is further reduced as manufacturers sacrifice margins as they seek to maintain a low-price-point baseline model.

At TSL 4, the standard represents the highest efficiency levels providing positive LCC savings, which comprise the gap-fill efficiency level between the current ENERGY STAR V. 6.0 level and ENERGY STAR Most Efficient level (EL 2) for standard-size dishwashers and max-tech efficiency level (EL 2) for compact-size dishwashers. The change in INPV is expected to range from −19.8 to −13.4 percent. At this level, free cash flow is estimated to decrease by 96.9 percent compared to the no-new-standards case value of $56.0 million in the year 2026, the year before the standards year. Currently, approximately 10 percent of domestic dishwasher shipments meet the efficiencies required at TSL 4. As with TSL 3, 9 percent of standard-size dishwasher shipments meet the efficiencies required. As with TSL 2, 21 percent of compact-size dishwasher shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers are the same as at TSL 3. The design options analyzed for compact-size dishwashers are the same as at TSL 2 and include implementing permanent magnet motors, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. The increase in conversion costs from the prior TSL is entirely due to the increased efficiency level required for compact-size dishwashers. As discussed previously, all manufacturers of compact-size countertop dishwashers with 4 or more place settings and in-sink dishwashers with less than 4 place settings would need to redesign their products to meet the efficiencies required, as DOE is not aware of any currently available products in these two configurations that meet TSL 4 (max-tech for compact-size dishwashers). Manufacturer feedback and the engineering analysis indicates that redesigning these compact-size dishwasher configurations to meet TSL 4 would require significant investment, both in terms of engineering resources and new tooling, relative to the size of the domestic compact-size dishwasher market. DOE expects industry to incur similar re-flooring costs compared to TSL 3. DOE estimates capital conversion costs of $73.9 million and product conversion costs of $61.7 million. Conversion costs total $135.6 million.

Under the tiered manufacturer markup scenario, one of the key drivers of impacts to INPV at TSL 4 is the result of margin compression for both standard-size and compact-size dishwashers as manufacturers forfeit premiums and cut into margins as they try to maintain a competitively priced baseline product. In particular, because TSL 4 sets standards for compact-size dishwashers at max-tech, manufacturers lose their premium markups for high-efficiency compact-size products, contributing to a reduction in future revenues and INPV.

At TSL 5, the standard represents the max-tech energy efficiency for both product classes and corresponds to EL 4 for standard-size dishwashers and EL 2 for compact-size dishwashers. The change in INPV is expected to range from −57.1 to −48.0 percent. At this level, free cash flow is estimated to decrease by 501.9 percent compared to the no-new-standards case value of $56.0 million in the year 2026, the year before the standards year. Currently, less than 1 percent of domestic dishwasher shipments meet the efficiencies required at TSL 5. For standard-size dishwashers, DOE estimates that no shipments currently meet the efficiencies required. As with TSL 4, 21 percent of compact-size dishwasher shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers include design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters and control strategies, separate drain pump, tub insulation, hydraulic system optimization, water diverter assembly, temperature sensor, 3-phase variable speed motor, and flow meter) and includes additional design options such as the use of stainless steel tub, in-sump integrated heater, condensation drying, and control strategies. The design options analyzed for compact-size dishwashers are the same as at TSL 4. The increase in conversion costs from the prior TSL is entirely due to the increased efficiencies required for standard-size dishwashers.

All manufacturers interviewed stated that meeting max-tech would necessitate significant platform redesign in order to meet the required efficiencies and maintain the product attributes consumers desire. Manufacturers noted that investments in new tooling, equipment and production line modifications may be necessary to implement a range of design options. Specifically, manufacturers discussed tooling for additional spray arms, new sump tooling, new stamping equipment, door opening systems, improved filtration systems, and new dish racks. Manufacturers would likely need to convert all existing plastic tub designs to stainless steel tubs, which would necessitate expanding existing stainless steel tub production capacity and retiring plastic injection equipment used for plastic tubs. None of the manufacturers interviewed, which together account for approximately 90 percent of dishwasher shipments, currently offer standard-size dishwashers that meet max-tech. Therefore, most manufacturers expressed technical uncertainty about the extent of the design changes and production line updates that would be needed to meet max-tech and satisfy their consumer base. Some manufacturers suggested they would explore new water purification technology systems for water reuse. Other manufacturers noted that meeting max-tech may necessitate new tub architectures, which would require significant capital investment. These manufacturers noted that if new technology was necessary (*e.g.,* water purification systems) or if new tub architectures were required, the 3-year compliance period may be insufficient to complete the necessary product redesign and production facility updates. DOE estimates capital conversion costs of $421.1 million and product conversion costs of $242.6 million. Conversion costs total $663.7 million.

At TSL 5, 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.

TSL 5 sets the standard for all products as high as technologically feasible, leaving manufacturers no ability to differentiate products by efficiency under the tiered manufacturer markup scenario. Thus, all margins collapse to the baseline levels.

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 dishwasher 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 U.S. Census Bureau's 2020 *ASM,* results of the engineering analysis, and manufacturer interviews.

DOE calculated these values using statistical data from the 2020 *ASM,*[99] BLS employee compensation data,[100] 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 is 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 product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that approximately 78 percent of standard-size dishwashers are produced domestically. DOE estimates that no compact-size dishwashers are produced domestically. Therefore, overall, DOE estimates that approximately 76 percent of all covered dishwashers sold in the United States 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. DOE's estimates only account for production workers who manufacture the specific products covered by this proposed rule.

Non-production workers account for the remainder of the direct employment figure. The non-production employees covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, management, *etc.* 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 3,890 domestic workers for standard-size dishwashers in 2027. Table V.10 shows the range of the impacts of energy

[99] U.S. Census Bureau, *Annual Survey of Manufactures.* "Summary Statistics for Industry Groups and Industries in the U.S. (2020)." Available at: *www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html* (last accessed July 15, 2022).

[100] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* June 16, 2022. Available at: *www.bls.gov/news.release/pdf/ecec.pdf* (last accessed August 1, 2022).

conservation standards on U.S. manufacturing employment in the standard-size dishwasher industry. As previously noted, DOE did not identify any U.S. manufacturing facilities producing compact-size dishwashers for the domestic market, and therefore does not present a range of direct employment impacts. The discussion below provides a qualitative evaluation of the range of potential impacts presented in the table.

TABLE V.10—DIRECT EMPLOYMENT IMPACTS FOR DOMESTIC STANDARD-SIZE DISHWASHER MANUFACTURERS IN 2027 *

	No-standards case	Trial standard level				
		1	2	3	4	5
Direct Employment in 2027 (Production Workers + Non-Production Workers)	3,890	3,923	3,923	3,923	3,923	4,601
Potential Changes in Direct Employment in 2027 *		(3,426) to 33	(3,426) to 33	(3,426) to 33	(3,426) to 33	(3,426) to 711

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

The direct employment impacts shown in Table V.10 represent the potential domestic employment changes that could result following the compliance date for the standard-size dishwashers in this proposal. The upper bound estimate corresponds to an increase in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered products within the United States after compliance takes effect.

To establish a conservative lower bound, DOE assumes all manufacturers would shift production to foreign countries or would shift to importing finished goods (versus manufacturing in-house). At lower TSLs (*i.e.,* TSL 1 through TSL 4), 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, both the complexity and cost of production facility updates increases, manufacturers are more likely to revisit their production location decisions. At max-tech, one manufacturer representing a large portion of the market noted concerns about the level of investment and indicated the potential need to relocate production lines in order to remain competitive.

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

As discussed in section V.B.2.a of this document, implementing the different design options analyzed for this NOPR would require varying levels of resources and investment. At higher efficiency levels, manufacturers noted that balancing more stringent energy and water use requirements while maintaining the product attributes their consumers value, becomes increasingly challenging. All manufacturers interviewed, which together account for approximately 90 percent of industry shipments, noted that meeting the standard-size dishwasher max-tech efficiencies and cleaning performance requirement while maintaining internal targets for other product attributes such as drying performance, cycle duration, and noise levels, would require significant investment. None of the manufacturers interviewed currently offer a max-tech product, and they expressed technical uncertainty about the exact technologies and production line changes would be needed to meet both the required efficiencies and their internal design standards. In interviews, several manufacturers expressed concerns that the 3-year time period between the announcement of the final rule and the compliance date of the amended energy conservation standard might be insufficient to design, test, and manufacture the necessary number of products to meet consumer demand. These manufacturers noted that the 3-year time period would be particularly problematic if the standard necessitated completely new tub architectures.

DOE seeks comment on whether manufacturers expect manufacturing capacity constraints would limit product availability to consumers in the timeframe of the amended standard compliance date (2027).

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop industry cash-flow estimates may not capture the differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionally impacted by energy conservation standards and could merit additional analysis. DOE did not identify any other adversely impacted manufacturer subgroups for this rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this document as part of the Regulatory Flexibility Analysis. In summary, the Small Business Administration (''SBA'') defines a ''small business'' as having 1,500 employees or less for NAICS 335220, ''Major Household Appliance Manufacturing.'' [101] Based on this classification, DOE did not identify any domestic OEMs that qualify as a small business. For a discussion of the impacts on the small business manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B of this document and 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 product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the

[101] U.S. Small Business Administration. ''Table of Small Business Size Standards.'' (Effective July 14, 2022). Available at: *www.sba.gov/document/support-table-size-standards* (last accessed September 28, 2022).

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.

For the cumulative regulatory burden analysis, DOE examines Federal, product-specific regulations that could affect dishwasher manufacturers that take effect approximately 3 years before or after the 2027 compliance date. This information is presented in Table V.11. The combined sum of total industry conversion costs as a percentage of total product revenue during the conversion periods across all rulemakings listed in Table V.11 is 2.8 percent.

In response to the January 2022 Preliminary Analysis, stakeholders commented on the cumulative regulatory burden analysis. See section IV.J.4 of this document for a summary of stakeholder comments and DOE's initial responses.

TABLE V.11—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING DISHWASHER MANUFACTURERS

Federal energy conservation standard	Number of OEMs *	Number of OEMs affected from the rule **	Approx. standards year	Industry conversion costs (millions $)	Industry conversion costs/product revenue *** (%)
Portable Air Conditioners 85 FR 1378 (January 10, 2020)	11	2	2025	$320.9 (2015$)	6.7
Consumer Furnaces † 87 FR 40590 (July 7, 2022)	15	1	2029	150.6 (2020$)	1.4
Commercial Water Heating Equipment † 87 FR 30610 (May 19, 2022)	14	1	2026	34.6 (2020$)	4.7
Consumer Clothes Dryers † 87 FR 51734 (August 23, 2022)	15	11	....	149.7 (2020$)	1.8
Microwave Ovens † 87 FR 52282 (August 24, 2022)	18	10	2026	46.1 (2021$)	0.7
Consumer Conventional Cooking Products 88 FR 6818 † (February 1, 2023)	34	11	2027	183.4 (2021$)	1.2
Residential Clothes Washers † 88 FR 13520 (March 3, 2023)	19	10	2027	690.8 (2021$)	5.2
Refrigerators, Freezers, and Refrigerator-Freezers † 88 FR 12452 (February 27, 2023)	49	15	2027	1,323.6 (2021$)	3.8
Miscellaneous Refrigeration Products † 88 FR 19382 (April 11, 2023)	38	8	2029	126.9 (2021$)	3.1
Room Air Conditioners ‡	8	4	2026	24.8	0.4

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing dishwashers that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† These rulemakings are in the proposed rule stage and all values are subject to change until finalized.

‡ At the time of issuance of this dishwasher proposed rule, this rulemaking has been issued and is pending publication in the **Federal Register**. Once published, the room air conditioners final rule will be available at: *www.regulations.gov/docket/EERE-2014-BT-STD-0059.*

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of dishwashers associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy and Water Savings

To estimate the energy and water savings attributable to potential amended standards for dishwashers, DOE compared their energy and water consumption under the no-new-standards case to their anticipated energy and water consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.12 and Table V.13 presents DOE's projections of the national energy and water savings for each TSL considered for dishwashers. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.12—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DISHWASHERS; 30 YEARS OF SHIPMENTS

[2027–2056]

	Trial standard level				
	1	2	3	4	5
	(quads)				
Source energy	0.05	0.07	0.29	0.32	1.18
FFC energy	0.05	0.08	0.31	0.34	1.25

TABLE V.13—CUMULATIVE NATIONAL WATER SAVINGS FOR DISHWASHERS; 30 YEARS OF SHIPMENTS

[2027–2056]

	Trial standard level				
	1	2	3	4	5
	(trillion gallons)				
Water Savings	0.09	0.11	0.24	0.26	0.94

OMB Circular A–4 [102] 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 proposed rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[103] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to dishwashers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES and NWS sensitivity analysis results based on a 9-year analytical period are presented in Table V.14 and Table V.15. The impacts are counted over the lifetime of dishwashers purchased in 2027–2035.

TABLE V.14—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DISHWASHERS; 9 YEARS OF SHIPMENTS

[2027–2035]

	Trial standard level				
	1	2	3	4	5
	(quads)				
Source energy	0.01	0.02	0.08	0.09	0.33
FFC energy	0.01	0.02	0.09	0.09	0.35

TABLE V.15—CUMULATIVE NATIONAL WATER SAVINGS FOR DISHWASHERS; 9 YEARS OF SHIPMENTS

[2027–2035]

	Trial standard level				
	1	2	3	4	5
	(trillion gallons)				
Water Savings	0.02	0.03	0.07	0.07	0.26

The energy savings in the NOPR analyses differ from the energy savings in the January 2022 Preliminary Analysis primarily due to the updated product class market share distribution as presented in the January 2022 Preliminary TSD. For these NOPR analyses, DOE updated market share distribution using historical shipments

[102] 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 November 2, 2021).

[103] 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.

data from available literature.[104] The market share for Product Class 2 decreased from 5 percent, used in the Preliminary Analyses, to 2 percent, used in the NOPR analyses. Additionally, DOE updated historical shipments using data from AHAM's Major Appliance Annual Trends 1989–2020 and updated shipment projections using *AEO 2022* instead of *AEO 2020.*

As discussed, DOE updated its analysis, including efficiency levels, based on more current information regarding shipments of dishwashers, resulting in FFC energy savings of around 0.31 quads over thirty years. Further, as also discussed in section III.D of this document, DOE recently eliminated the numerical threshold for determining significance of energy savings, reverting to its earlier approach of doing so on a case-by-case basis. See 86 FR 70892. In this NOPR, DOE proposes to adopt the energy conservation standards for dishwashers at TSL 3 and refers stakeholders to section V.C of this document where costs and benefits of the proposal are weighed.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for dishwashers. In accordance with OMB's guidelines on regulatory analysis,[105] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.13 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V.16—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR DISHWASHERS; 30 YEARS OF SHIPMENTS

[2027–2056]

Discount rate	Trial standard level				
	1	2	3	4	5
	(billion 2021$)				
3 percent	0.27	0.31	2.77	2.81	(12.60)
7 percent	0.09	0.08	1.11	1.10	(7.50)

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.14. The impacts are counted over the lifetime of products purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.17—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR DISHWASHERS; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate	Trial standard level				
	1	2	3	4	5
	(billion 2021$)				
3 percent	0.08	0.09	1.00	1.00	(5.37)
7 percent	0.03	0.03	0.54	0.53	(4.10)

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for dishwashers would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframe (2027–2031), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.F.1.d of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the dishwashers under consideration in this proposed rulemaking. Manufacturers of these products 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

[104] Euromonitor International. 2021. *Air treatment products in the U.S.* December. The report covers market shares for a number of products including dishwashers.

[105] 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 October 28, 2021).

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 dishwashers is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.15 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 III.D of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.18—CUMULATIVE EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056

Savings	TSL				
	1	2	3	4	5
Power Sector Emissions					
CO_2 *(million metric tons)*	2.3	3.2	11.4	12.3	46.1
CH_4 *(thousand tons)*	0.1	0.1	0.6	0.7	2.4
N_2O *(thousand tons)*	0.0	0.0	0.1	0.1	0.3
NO_X *(thousand tons)*	1.8	2.4	7.6	8.2	30.8
SO_2 *(thousand tons)*	0.3	0.6	3.3	3.6	13.3
Hg *(tons)*	0.0	0.0	0.0	0.0	0.1
Upstream Emissions					
CO_2 *(million metric tons)*	0.3	0.4	1.2	1.2	4.7
CH_4 *(thousand tons)*	27.5	36.6	112.5	121.7	457.9
N_2O *(thousand tons)*	0.0	0.0	0.0	0.0	0.0
NO_X *(thousand tons)*	4.3	5.7	17.6	19.1	71.8
SO_2 *(thousand tons)*	0.0	0.0	0.0	0.1	0.2
Hg *(tons)*	0.0	0.0	0.0	0.0	0.0
Total FFC Emissions					
CO_2 *(million metric tons)*	2.6	3.6	12.6	13.6	50.8
CH_4 *(thousand tons)*	27.5	36.8	113.1	122.3	460.3
N_2O *(thousand tons)*	0.0	0.0	0.1	0.1	0.4
NO_X *(thousand tons)*	6.1	8.1	25.2	27.3	102.5
SO_2 *(thousand tons)*	0.3	0.6	3.4	3.7	13.5
Hg *(tons)*	0.0	0.0	0.0	0.0	0.1

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 dishwashers. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.16 presents the value of CO_2 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.19—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2021$			
1	21.3	94.4	149.0	286.5

TABLE V.19—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056—Continued

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2021$			
2	29.8	132.1	208.3	400.6
3	105.3	465.4	733.9	1,412.2
4	113.8	503.1	793.2	1,526.3
5	425.9	1,882.7	2,968.5	5,712.1

As discussed in section IV.L.2 of this document, DOE estimated monetary benefits likely to result from the reduced emissions of CH_4 and N_2O that DOE estimated for each of the considered TSLs for dishwashers. Table V.17 presents the value of the CH_4 emissions reduction at each TSL, and Table V.18 presents the value of the N_2O emissions reduction at each TSL.

TABLE V.20—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056

TSL	SC–CH_4 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2021$			
1	10.7	32.9	46.3	87.0
2	14.2	43.9	61.8	116.2
3	43.8	135.1	190.0	357.3
4	47.4	146.1	205.5	386.5
5	178.3	549.7	773.2	1,454.4

TABLE V.21—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056

TSL	SC–N_2O Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2021$			
1	0.0	0.2	0.2	0.4
2	0.1	0.3	0.4	0.7
3	0.3	1.2	1.9	3.2
4	0.3	1.3	2.0	3.5
5	1.2	4.8	7.5	12.8

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. Thus, any value placed on reduced GHG emissions in this proposed rulemaking is subject to change. That said, because of omitted damages, DOE agrees with the IWG that these estimates most likely underestimate the climate benefits of greenhouse gas reductions. 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 economic benefits associated with SO_2 emissions reductions anticipated to result from the considered TSLs for dishwashers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.19 presents the present value for SO_2 emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.22—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056

TSL	7% discount rate	3% discount rate
	million 2021$	
1	5.3	13.9
2	10.2	26.9
3	62.8	164.8
4	67.8	177.8
5	249.7	654.5

DOE also estimated the monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for dishwashers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.19 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.23—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR DISHWASHERS SHIPPED IN 2027–2056

TSL	7% discount rate	3% discount rate
	million 2021$	
1	62.3	170.3
2	85.6	233.6
3	287.4	780.1
4	310.7	843.3
5	1,165.1	3,162.7

The benefits of reduced CO_2, CH_4, and N_2O emissions are collectively referred to as climate benefits. The benefits of reduced SO_2 and NO_X emissions are collectively referred to as health benefits. For the time series of estimated monetary values of reduced emissions, see chapter 14 of the NOPR TSD.

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.21 presents the NPV values that result from adding the monetized estimates of the potential economic, climate, and health benefits resulting from reduced GHG, SO_2, and NO_X emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered dishwashers, 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 dishwashers shipped in 2027–2056.

TABLE V.24—CONSUMER NPV COMBINED WITH CLIMATE AND HEALTH BENEFITS

[Billions 2021$]

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for NPV of Consumer and Health Benefits (billion 2021$)					
5% d.r., Average SC–GHG case	0.5	0.6	3.9	4.0	(8.2)
3% d.r., Average SC–GHG case	0.6	0.7	4.3	4.5	(6.3)
2.5% d.r., Average SC–GHG case	0.7	0.8	4.6	4.8	(5.0)
3% d.r., 95th percentile SC–GHG case	0.8	1.1	5.5	5.7	(1.6)
Using 7% discount rate for NPV of Consumer and Health Benefits (billion 2021$)					
5% d.r., Average SC–GHG case	0.2	0.2	1.6	1.6	(5.5)
3% d.r., Average SC–GHG case	0.3	0.4	2.1	2.1	(3.6)
2.5% d.r., Average SC–GHG case	0.3	0.4	2.4	2.5	(2.3)
3% d.r., 95th percentile SC–GHG case	0.5	0.7	3.2	3.4	1.1

The national operating cost savings are domestic U.S. monetary savings that occur as a result of purchasing the covered dishwashers, and are measured for the lifetime of products shipped in 2027–2056. The benefits associated with reduced GHG emissions achieved as a result of the adopted standards are also calculated based on the lifetime of dishwashers shipped in 2027–2056.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for dishwashers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. DOE refers to this process as the ''walk-down'' analysis.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forgo the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. For consumers opting not to purchase a dishwasher, the energy consumption of hand-washing dishes is accounted for when energy and water savings are quantified in the NIA (see section 10.4.2 in chapter 10 of the NOPR TSD). Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[106]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[107]

DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Dishwashers Standards

Table V.25 and Table V.26 summarize the quantitative impacts estimated for each TSL for dishwashers. The national impacts are measured over the lifetime of dishwashers 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. DOE exercises its own judgment in presenting monetized climate benefits as recommended in applicable Executive orders, and DOE would reach the same conclusion presented in this document in the absence of the social cost of greenhouse gases, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR DISHWASHER TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings (quads)					
Quads	0.05	0.08	0.31	0.34	1.25
Cumulative FFC Emissions Reduction (Total FFC Emissions)					
CO_2 *(million metric tons)*	2.56	3.58	12.56	13.58	50.81
CH_4 *(thousand tons)*	27.55	36.77	113.10	122.32	460.32
N_2O *(thousand tons)*	0.01	0.02	0.09	0.10	0.36
NO_X *(thousand tons)*	6.09	8.14	25.20	27.25	102.53
SO_2 *(thousand tons)*	0.30	0.57	3.39	3.65	13.46
Hg *(tons)*	0.00	0.00	0.02	0.02	0.08
Present Value of Monetized Benefits and Costs (3% discount rate, billion 2021$)					
Consumer Operating Cost Savings	0.42	0.59	2.92	3.09	4.03
Climate Benefits *	0.13	0.18	0.60	0.65	2.44
Health Benefits **	0.18	0.26	0.94	1.02	3.82

[106] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: *10.1111/0034–6527.00354.*

[107] Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (last accessed October 28, 2021).

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR DISHWASHER TSLS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Total Benefits †	0.73	1.02	4.47	4.76	10.28
Consumer Incremental Product Costs ‡	0.15	0.28	0.15	0.28	16.62
Consumer Net Benefits	0.27	0.31	2.77	2.81	(12.60)
Total Net Benefits	0.58	0.74	4.32	4.48	(6.34)
Present Value of Monetized Benefits and Costs (7% discount rate, billion 2021$)					
Consumer Operating Cost Savings	0.17	0.23	1.19	1.26	1.60
Climate Benefits *	0.13	0.18	0.60	0.65	2.44
Health Benefits **	0.07	0.10	0.35	0.38	1.41
Total Benefits †	0.36	0.51	2.14	2.29	5.45
Consumer Incremental Product Costs ‡	0.08	0.15	0.08	0.15	9.09
Consumer Net Benefits	0.09	0.08	1.11	1.10	(7.50)
Total Net Benefits	0.28	0.35	2.06	2.13	(3.64)

Note: This table presents the costs and benefits associated with dishwashers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. 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 Interagency Working Group on the Social Cost of Greenhouse Gases (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 as well as installation costs.

TABLE V.26—SUMMARY OF ANALYTICAL RESULTS FOR DISHWASHER TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts:					
Industry NPV (*million* 2021$) (No-new-standards case INPV = $713.6).	664.4 to 707.0	657.7 to 701.1	578.7 to 624.1	572.0 to 618.2	305.8 to 371.1
Industry NPV *(% change)*	(6.9) to (0.9)	(7.8) to (1.8)	(18.9) to (12.5)	(19.8) to (13.4)	(57.1) to (48.0)
Consumer Average LCC Savings (2021$):					
PC 1: Standard-size dishwashers	$20	$20	$17	$17	($96)
PC 2: Compact-size dishwashers	$30	$6	$30	$6	$6
Shipment-Weighted Average *	$20	$20	$18	$17	($94)
Consumer Simple PBP (years):					
PC 1: Standard-size dishwashers	3.0	3.0	2.4	2.4	12.4
PC 2: Compact-size dishwashers	0.0	5.7	0.0	5.7	5.7
Shipment-Weighted Average *	3.0	3.1	2.3	2.5	12.2
Percent of Consumers that Experience a Net Cost:					
PC 1: Standard-size dishwashers	3%	3%	3%	3%	94%
PC 2: Compact-size dishwashers	0%	49%	0%	49%	49%
Shipment-Weighted Average *	3%	4%	3%	4%	93%

DOE first considered TSL 5, which represents the max-tech efficiency levels for both product classes. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters and control strategies, separate drain pump, tub insulation, hydraulic system optimization, water diverter assembly, temperature sensor, 3-phase variable-speed motor, and flow meter) and includes additional design options such as the use of stainless steel tub, in-sump integrated heater, condensation drying, and control strategies. For a compact-size dishwasher, this efficiency level includes the design options considered at the lower efficiency levels (*i.e.,* improved control strategies) and additionally includes the use of permanent magnet motor, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. TSL 5 would save an estimated 1.25 quads of energy and 0.94 trillion gallons of water, an amount DOE considers significant.[108] Under TSL 5, the NPV of consumer benefit would be −$7.5 billion using a discount rate of 7 percent, and −$12.6 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 50.81 Mt of CO_2, 13.46 thousand tons of SO_2, 102.53 thousand tons of NO_X, 0.08 tons of Hg, 460.32 thousand tons of CH_4, and 0.36 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 5 is $2.44 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $1.41 billion using a 7-percent discount rate and $3.82 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

[108] Please see section III.E.2 of this document for a discussion of factors that DOE considers in determining whether energy savings are significant.

emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is −$7.50 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is −$12.60 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, the average LCC impact is a savings of −$96 for standard-size dishwashers and $6 for compact-size dishwashers. The simple payback period is 12.4 years for standard-size dishwashers and 5.7 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost is 94 percent for standard-size dishwashers and 49 percent for compact-size dishwashers. Notably, for the standard-size product class, which as discussed represents 98 percent of the market, TSL 5 (which includes EL 4 for this product class) would increase the first cost by $135.

For the low-income consumer group, the average LCC impact is a savings of −$28 for standard-size dishwashers and $50 for compact-size dishwashers. The simple payback period is 5.5 years for standard-size dishwashers and 2.6 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost is 59 percent for standard-size dishwashers and 28 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact is a savings of −$108 for standard-size dishwashers and −$10 for compact-size dishwashers. The simple payback period is 14.9 years for standard-size dishwashers and 6.8 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost is 96 percent for standard-size dishwashers and 56 percent for compact-size dishwashers.

At TSL 5, the projected change in INPV ranges from a decrease of $407.8 million to a decrease of $342.4 million, which correspond to decreases of 57.1 percent and 48.0 percent, respectively. Industry conversion costs could reach $663.7 million at this TSL, as manufacturers work to redesign their portfolio of model offerings, transition their standard-size dishwasher platforms entirely to stainless steel tubs, and renovate manufacturing facilities to accommodate changes to the production line and manufacturing processes.

DOE estimates that less than 1 percent of dishwasher shipments currently meet the max-tech levels. Standard-size dishwashers account for approximately 98 percent of annual shipments. Of the 19 standard-size dishwasher OEMs, only one OEM, which accounts for approximately 4 percent of basic models in CCD, currently offers products that meet the max-tech efficiencies required. All manufacturers interviewed, which together account for approximately 90 percent of the industry shipments, expressed uncertainty as to whether they could reliably meet the standard-size dishwasher max-tech efficiencies and the cleaning performance threshold and noted it would require a platform redesign and significant investment in tooling, equipment, and production line modifications. Many manufacturers would need to increase production capacity of stainless steel tub designs. Some manufacturers noted that a max-tech standard could necessitate new tub architectures.

For compact-size dishwashers, which account for the remaining 2 percent of annual shipments, DOE estimates that 21 percent of shipments currently meet the required efficiencies. Of the five compact-size dishwasher OEMs, three OEMs currently offer compact-size products that meet max-tech. At TSL 5, compact-size countertop dishwashers with 4 or more place settings and in-sink dishwashers with less than 4 place settings are not currently available in the market. Meeting TSL 5 is technologically feasible for those products; however, DOE expects that it would take significant investment relative to the size of the compact-size dishwasher market to redesign them to meet the max-tech efficiencies.

Based on the above considerations, the Secretary tentatively concludes that at TSL 5 for dishwashers, the benefits of energy and water savings, emissions reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by the negative NPV of consumer benefits and the impacts on manufacturers, including the large potential reduction in INPV. At TSL 5, a majority of standard-size dishwashers (94 percent) would experience a net cost and the average LCC savings would be negative (−$96) for this product class. Additionally at TSL 5, manufacturers would need to make significant upfront investments to redesign product platforms and update manufacturing facilities. Some manufacturers expressed concern that they would not be able to complete product and production line updates within the 3-year conversion period. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE next considered TSL 4, which represents the highest efficiency levels providing positive LCC savings. TSL 4 comprises the gap-fill efficiency level between the ENERGY STAR Most Efficient level and the current ENERGY STAR V. 6.0 level (EL 2) for standard-size dishwashers and the max-tech efficiency level for compact-size dishwashers. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters, separate drain pump, and tub insulation) and additionally includes the use of improved control strategies. For a compact-size dishwasher, this efficiency level includes the design options considered at the lower efficiency levels (*i.e.,* improved control strategies) and additionally includes the use of permanent magnet motor, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. TSL 4 would save an estimated 0.34 quads of energy and 0.26 trillion gallons of water, an amount DOE considers significant.[109] Under TSL 4, the NPV of consumer benefit would be $1.10 billion using a discount rate of 7 percent, and $2.81 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 13.58 Mt of CO_2, 3.65 thousand tons of SO_2, 27.25 thousand tons of NO_X, 0.02 tons of Hg, 122.32 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 $0.65 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $0.38 billion using a 7-percent discount rate and $1.02 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 $2.13 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $4.48 billion. The estimated total NPV is provided for additional information, however DOE

[109] Please see section III.E.2 of this document for a discussion of factors that DOE considers in determining whether energy savings are significant.

primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, the average LCC impact is a savings of $17 for standard-size dishwashers and $6 for compact-size dishwashers. The simple payback period is 2.4 years for standard-size dishwashers and 5.7 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost is 3 percent for standard-size dishwashers and 49 percent for compact-size dishwashers.

For the low-income consumer group, the average LCC impact is a savings of $20 for standard-size dishwashers and $50 for compact-size dishwashers. The simple payback period is 1.0 years for standard-size dishwashers and 2.6 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost is 2 percent for standard-size dishwashers and 28 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact is a savings of $14 for standard-size dishwashers and −$10 for compact-size dishwashers. The simple payback period is 2.9 years for standard-size dishwashers and 6.8 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost is 4 percent for standard-size dishwashers and 56 percent for compact-size dishwashers.

At TSL 4, the projected change in INPV ranges from a decrease of $141.6 million to a decrease of $95.4 million, which correspond to decreases of 19.8 percent and 13.4 percent, respectively. Industry conversion costs could reach $135.6 million at this TSL as some manufacturers of standard-size dishwashers redesign products to enable improved controls and better design tolerances and manufacturers of certain compact-size dishwashers redesign products to meet max-tech.

DOE estimates that approximately 10 percent of dishwasher shipments currently meet the TSL 4 efficiencies, of which approximately 9 percent of standard-size dishwasher shipments and 21 percent of compact-size dishwasher shipments meet the required efficiencies. Compared to max-tech, more manufacturers offer standard-size dishwashers that meet the required efficiencies. Of the 19 OEMs offering standard-size products, 11 OEMs offer products that meet the efficiency level required. For compact-size dishwashers, TSL 4 represents the same efficiency level as for TSL 5. Just as with TSL 4, compact-size countertop dishwashers with 4 or more place settings and in-sink dishwashers with less than 4 place settings are not currently available in the market at TSL 4 levels. Meeting TSL 4 is technologically feasible for those products; however, DOE expects that it would take significant investment relative to the size of the compact-size dishwasher market for them to meet the max-tech efficiencies.

Based upon the above considerations, the Secretary tentatively concludes that at TSL 4 for dishwashers, the benefits of energy and water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by negative LCC savings for the senior-only households for the compact-size dishwasher product class and the high percentage of consumers with net costs for the compact-size dishwasher product class. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE requests comment on whether there is any information or data on costs and benefits for all households, and/or the sub-groups of low-income and senior-only households that would affect the determination that TSL 4 is not economically justified. DOE also requests information on the income distribution of senior-only households with compact dishwashers, as such households drive many of the differences in outcomes between TSL 4 and other TSLs.

DOE then considered TSL 3, which comprises the gap-fill efficiency level between the ENERGY STAR Most Efficient level and the current ENERGY STAR V. 6.0 level (EL 2) for standard-size dishwashers and the current ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters, separate drain pump, and tub insulation) and additionally includes the use of improved control strategies. For a compact-size dishwasher, this efficiency level represents the use of improved controls. TSL 3 would save an estimated 0.31 quads of energy and 0.24 trillion gallons of water, an amount DOE considers significant.[110] Under TSL 3, the NPV of consumer benefit would be $1.11 billion using a discount rate of 7 percent, and $2.77 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 12.56 Mt of CO_2, 3.39 thousand tons of SO_2, 25.20 thousand tons of NO_X, 0.02 tons of Hg, 113.10 thousand tons of CH_4, and 0.09 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 $0.60 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $0.35 billion using a 7-percent discount rate and $0.94 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 $2.06 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $4.32 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 3, the average LCC impact is a savings of $17 for standard-size dishwashers and $30 for compact-size dishwashers. The simple payback period is 2.4 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost is 3 percent for standard-size dishwashers and 0 percent for compact-size dishwashers.

For the low-income consumer group, the average LCC impact is a savings of $20 for standard-size dishwashers and $33 for compact-size dishwashers. The simple payback period is 1.0 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost is 2 percent for standard-size dishwashers and 0 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact is a savings of $14 for standard-size dishwashers and $24 for compact-size dishwashers. The simple payback period is 2.9 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost is 4 percent for standard-size dishwashers and 0 percent for compact-size dishwashers.

[110] Please see section III.E.2 of this document for a discussion of factors that DOE considers in determining whether energy savings are significant.

At TSL 3, the projected change in INPV ranges from a decrease of $134.9 million to a decrease of $89.5 million, which correspond to decreases of 18.9 percent and 12.5 percent, respectively. Industry conversion costs could reach $125.6 million at this TSL as some manufacturers redesign standard-size products to enable improved controls and better design tolerances.

DOE estimates that approximately 11 percent of dishwasher shipments currently meet the TSL 3 efficiencies, of which approximately 9 percent of standard-size dishwasher shipments and 87 percent of compact-size shipments meet the required efficiencies. At this level, the decrease in conversion costs compared to TSL 4 is entirely due to the lower efficiency level required for compact-size dishwashers, as the efficiency level required for standard-size dishwashers is the same as for TSL 4 (EL 2). All of the compact-size dishwasher OEMs currently offer products that meet TSL 3. At this level, DOE expects manufacturers of compact-size dishwashers would implement improved controls, which would likely require minimal upfront investment.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that a standard set at TSL 3 for dishwashers would be economically justified. At this TSL, the weighted-average LCC savings for both product classes is $18. The weighted-average share of consumers with a net LCC cost for both product classes is 3 percent. For both consumer sub-groups, the LCC savings are positive and the net share of consumers with a net LCC cost is below 5 percent for both product classes. The FFC national energy and water savings are significant and the NPV of consumer benefits is $2.77 billion and $1.11 billion using both a 3-percent and 7-percent discount rate respectively. 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 seven 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 $0.60 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.94 billion (using a 3-percent discount rate) or $0.35 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

The proposed standards are applicable to the regulated cycle type (*i.e.,* normal cycle); manufacturers can continue to provide currently available additional, non-regulated cycle types (*e.g.,* quick cycles, pots and pans, heavy, delicates, *etc.*) for consumers that choose to utilize them. Specifically, DOE expects quick cycles, which often clean a load within 1 hour or less, and existing drying options would still be available on dishwasher models that currently offer such cycle types. DOE has no information that would suggest that any aspect of this proposed rule would limit the other cycle options, especially quick cycles. Additionally, in the January 2022 Preliminary TSD, DOE provided data from its investigatory testing sample that determined that cycle time is not substantively correlated with energy and water consumption of the normal cycle.[111] Based on these results, DOE assumes that this proposed rule would not have any substantive impact to normal cycle durations.

The test procedure in appendix C2, which includes provisions for a minimum cleaning index threshold of 70 to validate the selected test cycle, will go into effect at such time as compliance is required with any amended energy conservation standards. At TSL 3, both standard-size and compact-size dishwasher models achieving the efficiencies, as measured by appendix C2, including the cleaning performance threshold, are readily available on the market.

Although DOE considered proposed amended standard levels for dishwashers by grouping the efficiency levels for each product class into TSLs, DOE evaluates all analyzed efficiency levels in its LCC analysis and all efficiency levels with positive LCC savings for the NIA and MIA analysis. For both standard-size and compact-size dishwashers, the proposed standard level represents the maximum energy savings that does not result in a large percentage of consumers experiencing a net LCC cost. The efficiency levels at the proposed standard level result in positive LCC savings for both product classes, significantly reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has tentatively concluded they are economically justified, as discussed for TSL 3 in the preceding paragraphs.

Therefore, based on the above considerations, DOE proposes to adopt the energy conservation standards for dishwashers at TSL 3. The proposed amended energy conservation standards for dishwashers, which are expressed in EAEU and per-cycle water consumption, shall not exceed the values shown in Table V.27.

TABLE V.27—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR DISHWASHERS

Product class	Estimated annual energy use (kWh/year) *	Per-cycle water consumption (gal/cycle)
PC 1: Standard-size Dishwashers (≥8 place settings plus 6 serving pieces)	223	3.3
PC 2: Compact-size Dishwashers (<8 place settings plus 6 serving pieces)	174	3.1

* Based on appendix C2.

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-

[111] See section 5.5.1 of the January 2022 Preliminary TSD available here: *https://www.energy.gov/sites/default/files/2022-01/dw-tsd.pdf.*

percent discount rate case for GHG social costs, the estimated cost of the proposed standards for dishwashers is $8.6 million per year in increased equipment costs, while the estimated annual benefits are $125.8 million from reduced equipment operating costs, $34.6 million from GHG reductions, and $37.0 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $188.8 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for dishwashers is $8.5 million per year in increased equipment costs, while the estimated annual benefits are $167.8 million from reduced equipment operating costs, $34.6 million from GHG reductions, and $54.3 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $248.1 million per year.

TABLE V.28—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR DISHWASHERS

[TSL 3]

Category	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	167.8	166.8	169.5
Climate Benefits *	34.6	33.8	35.3
Health Benefit **	54.3	53.1	55.4
Total Benefits †	256.6	253.7	260.2
Consumer Incremental Product Costs ‡	8.5	9.8	8.2
Net Benefits	248.1	243.8	251.9
7% discount rate			
Consumer Operating Cost Savings	125.8	125.0	127.0
Climate Benefits *	34.6	33.8	35.3
Health Benefit **	37.0	36.3	37.7
Total Benefits †	197.3	195.1	199.9
Consumer Incremental Product Costs ‡	8.6	9.7	8.3
Net Benefits	188.8	185.3	191.6

Note: This table presents the costs and benefits associated with dishwashers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.1 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 SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. 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 Interagency Working Group on the Social Cost of Greenhouse Gases (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. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011) 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 constitute a ''significant regulatory action within the scope of section 3(f)(1)'' of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this proposed rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*). DOE has not prepared an IRFA for the products that are the subject of this proposed rulemaking.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

For manufacturers of dishwashers, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (See 13 CFR part 121.) The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing of dishwashers is classified under NAICS code 335220,[112] ''Major Household Appliance Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

DOE conducted a focused inquiry into small business manufacturers of the products covered by this rulemaking. DOE reviewed its Compliance Certification Database,[113] California Energy Commission's Modernized Appliance Efficiency Database System,[114] and ENERGY STAR's Product Finder dataset[115] to create a list of companies that import or otherwise manufacture the products covered by this proposal. DOE then consulted publicly available data to identify OEMs selling dishwashers in the U.S. DOE relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet[116]) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this rulemaking, do not meet SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 21 dishwasher OEMs. DOE did not identify any domestic OEMs that qualify as a ''small business.'' Therefore, DOE did not identify any companies that meet SBA's definition of a ''small business.''

Based on the initial finding that there are no dishwasher manufacturers who would qualify as small businesses, DOE certifies that the proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities and has not prepared an IRFA for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE requests comment on its initial conclusion that there are no small business manufacturers of dishwashers.

C. Review Under the Paperwork Reduction Act

Manufacturers of dishwashers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for dishwashers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including dishwashers. (See generally 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation

[112] U.S. Small Business Administration. ''Table of Small Business Size Standards.'' (Effective October 1, 2022). Available at: *www.sba.gov/document/support-table-size-standards* (last accessed November 21, 2022).

[113] U.S. Department of Energy Compliance Certification Database, available at *www.regulations.doe.gov/certification-data/products.html#q=Product_Group_s%3A** (last accessed June 2, 2022).

[114] California Energy Commission Modernized Appliance Efficiency Database System, available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed June 2, 2022).

[115] ENERGY STAR Product Finder data set, available at *www.energystar.gov/productfinder* (last accessed June 2, 2022).

[116] The Dun & Bradstreet Hoovers subscription login is accessible at *app.dnbhoovers.com* (last accessed November 1, 2022).

standards for consumer products or industrial product. 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 product, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by dishwashers manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency dishwashers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this proposed rule would amend energy conservation standards for dishwashers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family

Policymaking Assessment for any rule that may affect family well-being. This proposed rule, if finalized, 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, if finalized as proposed, would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

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

L. Information Quality

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

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[117] 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. Further evaluation under that process is expected to continue in 2022.

[117] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed July 19, 2022).

VII. Public Participation

A. Participation in the Webinar

The time and date the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=38&action=viewlive*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov*. Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on specific technology options for reducing standby power, including the type of technologies implemented and the estimated improvement in standby power.

(2) DOE requests comment on the proposed baseline compact-size dishwasher EAEU of 191 kWh/year for this NOPR.

(3) DOE requests feedback on the efficiency levels analyzed for each product class in this proposal.

(4) DOE requests comment on the baseline MPCs and incremental MPCs developed for each dishwasher product class.

(5) DOE requests comment on the efficiency characteristics used in the consumer water heater rulemaking described here and encourages comment in both rulemakings.

(6) DOE requests comment on the amount of water and energy used for pre-rinsing dishes and flatware before their placement into a dishwasher.

(7) DOE requests comment and information on dishwasher lifetime.

(8) DOE seeks data on the no-new-standards case efficiency distribution for the compact-size product class, and the efficiency distribution projection for both the standard-size and the compact-size product classes during the analysis period (2027–2056).

(9) DOE seeks comment on the approach and inputs used to develop no-new-standards case shipments projection,

(10) DOE requests comment on whether industry expects a compression of markups due higher standards, as reflected in the tiered scenario for manufacturer markups.

(11) DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

(12) DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

(13) DOE seeks comment on whether manufacturers expect manufacturing capacity constraints would limit product availability to consumers in the timeframe of the amended standard compliance date (2027).

(14) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of dishwashers associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(15) DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

(16) DOE requests comment on its initial conclusion that there are no small business manufacturers of dishwashers.

(17) DOE welcomes comments on any analytical approaches to modeling distributional impacts on low-income, senior citizen, renters, or other underrepresented groups who may be impacted by the proposed standards.

(18) DOE welcomes comments on the assumptions regarding market size, conditions and dynamics. We welcome specific comment on impacts on downstream industries and markets, including prices for microchips, semiconductors, or other products related to the proposed standards.

(19) DOE welcomes comment any unaccounted benefits in this analysis such as the benefits of saving time from handwashing dishes, saving money on buying paper/plastic cups/plates/utensils and other benefits from purchasing a dishwasher for households that are not currently in the market related to the proposed standards.

(20) DOE welcomes comments on other related EERE rulemakings that intersect with this rulemaking such as Consumer Water Heaters related to the proposed standards.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 1, 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 5, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.32 by revising paragraph (f)(1) introductory text and paragraph (f)(2).

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(f) * * *

(1) All dishwashers manufactured on or after May 30, 2013, and before [*date 3 years after date of publication of the final rule in the* ***Federal Register***], shall meet the following standard—

* * * * *

(2) All dishwashers manufactured on or after [*date 3 years after date of publication of the final rule in the* ***Federal Register***], shall not exceed the following standard—

Product class	Estimated annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
Standard-size (≥8 place settings plus 6 serving pieces)	223	3.3
Compact-size (<8 place settings plus 6 serving pieces)	174	3.1

Where the place settings are as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) and the test load is as specified in section 2.4 of appendix C2 in subpart B of this part.

* * * * *

[FR Doc. 2023–09969 Filed 5–18–23; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Parts 52 and 81

Air Plan Approval; Michigan; Clean Data Determination for the Detroit Area for the 2015 Ozone Standard and Redesignation of the Detroit, MI Area to Attainment of the 2015 Ozone Standards; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0058; FRL–10634–02–R5]

Air Plan Approval; Michigan; Clean Data Determination for the Detroit Area for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining under the Clean Air Act (CAA) that the Detroit, Michigan nonattainment area (hereafter also referred to, respectively, as the ''Detroit area'' or ''area'') has attained the 2015 ozone National Ambient Air Quality Standards (NAAQS or standard). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2020–2022 design period showing that the area achieved attainment of the 2015 ozone NAAQS, based on the exclusion of certain exceedances of the 2015 ozone NAAQS that were due to exceptional events. EPA is taking final agency action on an exceptional events request submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on January 26, 2023. As a result of the clean data determination, based on exclusion of event-influenced data, EPA is suspending the requirements for the area to submit attainment demonstrations and associated Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP) plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS. This action does not constitute a redesignation of the area to attainment of the 2015 ozone NAAQS.

DATES: This final rule is effective on May 19, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2023–0058. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

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

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

I. Background

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. On August 3, 2018, EPA designated the Detroit area, consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties, as a Marginal nonattainment area for the 2015 ozone NAAQS (83 FR 25776). On February 1, 2023, EPA determined based on 2018–2020 monitoring data that the Detroit area had failed to attain by its Marginal attainment date of August 3, 2021, and reclassified the area to Moderate (88 FR 6633).[1]

On February 3, 2023, EPA proposed to determine that the Detroit area attained the 2015 ozone NAAQS, based upon complete, quality-assured, and certified ambient air monitoring data for the 2020–2022 design period (88 FR 7382). Such a determination, based upon EPA's Clean Data Policy, is known informally as a clean data determination.

EPA's proposed clean data determination relied upon EPA's concurrence on an exceptional events demonstration submitted by EGLE on January 26, 2023, which requested exclusion of ozone concentrations recorded at the Wayne County monitor at East 7 Mile with Site ID 26–163–0019 on June 24 and 25, 2022. EGLE posted the demonstration for public comment on December 19, 2022, after substantial engagement with EPA staff who provided guidance on analytical methods and data that is used to support exceptional events demonstrations under EPA's exceptional events rule. EGLE's January 26, 2023, submittal was substantially similar to the version posted for State public comment on December 19, 2022, allowing EPA to expeditiously review the comments EGLE received on the demonstration, and to concur on EGLE's demonstration on January 30, 2023.

In the February 3, 2023, proposed clean data determination, EPA proposed to take final agency action on the exceptional events concurrence, which removed the event-influenced data from the design value, and opened an opportunity for public comment on EPA's concurrence.

II. Response to Comments

Upon publication of the February 3, 2023, proposed clean data determination, EPA opened a 31-day comment period, ending March 6, 2023. During the comment period EPA received 32 comments. One comment recommended that EPA finalize the proposed actions, and the remaining comments were adverse or raised issues that are not relevant to EPA's proposed actions. The most detailed set of adverse comments was submitted by the Great Lakes Environmental Law Center (GLELC) together with Sierra Club, and several other comments referenced the GLELC comment or raise similar issues. Summaries of the adverse comments

[1] EPA previously proposed to approve a January 3, 2022, request by EGLE to redesignate the Detroit area to attainment of the 2015 ozone NAAQS based on 2019–2021 monitoring data showing attainment of the 2015 ozone NAAQS (87 FR 14210). EPA's proposed approval was published on March 14, 2022, and the comment period closed on April 27, 2022. In this final action, EPA is not taking further action to finalize the proposed redesignation. EPA is responding to comments received during the comment period for the proposed redesignation on EPA's separate final action on EGLE's January 3, 2022, request.

and EPA's responses are provided below.

A. Environmental Justice Considerations

Comment: Several commenters raised concerns regarding asthma disparities in Detroit and other respiratory diseases affecting residents of the area. In these comments, commenters referenced asthma rates in Detroit that are higher than the State average, as well as relatively high asthma hospitalization rates in specific Wayne County zip codes, which are near the East 7 Mile monitor. GLELC referenced statistics indicating that asthma rates for Detroit adults increased over the time period from 2016 to 2021. In her comment letter, U.S. Representative Rashida Tlaib referenced a report identifying several disparities in asthma rates, including statistics that Black residents in Detroit were more than three times more likely to be hospitalized than white Detroit residents. Several commenters also referenced longstanding environmental justice concerns affecting the Detroit area, especially regarding poverty rates and vulnerable populations. Several commenters noted that EPA's mission is to protect human health and the environment, and questioned whether EPA's action is contrary to that mission.

Response: EPA is committed to the meaningful involvement and fair treatment of vulnerable populations disproportionately affected by pollution.

Without agreeing or disagreeing with commenters' impact analysis, EPA acknowledges that communities in Detroit face environmental conditions that have adverse human health or environmental effects on people of color, and/or low-income populations. This action, however, is not likely to change existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples because it reflects air quality measurements for ground level ozone that have improved significantly over time due to the implementation of pollution reduction programs in the area and nationally to levels that now meet health-based air quality standards.

Additionally, the Agency expects ozone values to improve further in the future as recently promulgated pollution reduction requirements are implemented.

In order to identify environmental burdens and susceptible populations in communities in the Detroit area, EPA performed a screening-level analysis using the latest version of EPA's EJ screening and mapping tool (''EJSCREEN'').[2] EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators at the county level for each county within the Detroit nonattainment area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).

EJSCREEN provides environmental indicators for 12 pollutants or sources, which include fine particulate matter ($PM_{2.5}$), ozone, air toxics cancer risk, traffic proximity, lead paint, Superfund site proximity, underground storage tanks, and wastewater discharge. Of the seven counties in the Detroit area, all but St. Clair County scored at or above the 80th percentile nationally for at least one indicator: Livingston County for Superfund site proximity and wastewater; Macomb County for $PM_{2.5}$, traffic proximity, Superfund site proximity, and underground storage tanks; Monroe County for ozone; Oakland County for traffic proximity, underground storage tanks, and wastewater; Washtenaw County for underground storage tanks; and Wayne County for $PM_{2.5}$, air toxics cancer risk, traffic proximity, lead paint, underground storage tanks, and wastewater discharge.

EPA's screening-level analysis indicates that, of the seven counties in the Detroit area, only Wayne County scored above the national average for the EJSCREEN ''Demographic Index,'' which is the average of an area's percent minority and percent low-income populations. As discussed in EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[3] As a function in part due to its relatively high demographic index, Wayne County is the only county in the Detroit area scoring at or above the 80th percentile in at least one EJ Index, which is derived by combining a single environmental factor with the demographic indicator. Specifically, Wayne County has EJ Indexes above the 80th percentile in $PM_{2.5}$, ozone, traffic proximity, lead paint, and underground storage tanks. EPA has provided that if any of the EJ indexes for the areas under consideration are at or above the 80th percentile nationally, then further review may be appropriate.[4]

EPA is aware of and sensitive to commenters' concerns about elevated asthma rates and other respiratory diseases in the Detroit area. GLELC references statistics showing that asthma rates for adults in Detroit increased from 15.5% in 2016 to 16.2% in 2021. Asthma can be a debilitating illness made worse by poor air quality, including high ozone concentrations, among other stressors.

As an initial matter, EPA notes that the October 26, 2015, rulemaking strengthening the ozone NAAQS to the level of 0.070 ppm provided a detailed rationale for the Administrator's determination that the 2015 ozone NAAQS would be protective of public health (80 FR 65292). This rationale included explicit consideration of protection for people, including children, with asthma. As we explain in the October 26, 2015, rulemaking, asthma is a multi-etiologic disease, and air pollutants, including ozone, represent only one potential factor that may trigger an asthma exacerbation. The design value for ozone in the Detroit area has decreased from 0.073 ppm, when the area was initially designated nonattainment for the 2015 ozone NAAQS (83 FR 25776) to the current 0.070 ppm (87 FR 14210).

EPA reviewed current and upcoming emission reduction measures that are anticipated to further mitigate pollution issues in the Detroit area. Existing Federal mobile source and point source emission reduction programs will result in ongoing NO_X and VOC emissions reductions in the Detroit area. For example, NO_X cap and trade programs such as the Cross-State Air Pollution Rule continue to achieve emissions reductions that are protective of human health regardless of whether EPA makes a clean data determination or redesignates downwind areas for any NAAQS. In addition, the Federal Good Neighbor Plan for the 2015 ozone NAAQS, as promulgated, is projected to achieve emissions reductions that will provide health benefits to populations living in proximity to covered facilities beginning in the 2023 ozone season.[5]

Comment: A comment by GLELC noted that EPA has discretion to delay action on a concurrence of an exceptional events demonstration and clean data determination, or to not act at all. The commenter stated, ''[a]t a

[2] *See* documentation on EPA's Environmental Justice Screening and Mapping Tool at *https://www.epa.gov/ejscreen*.

[3] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[4] EPA, ''EJSCREEN Technical Documentation,'' appendix H (September 2019).

[5] See Regulatory Impact Analysis available at *https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs*.

minimum, EPA has the discretion to wait for this summer's ozone season to see if the area will continue to attain the standards.'' The commenter raised Executive Order 12898, and noted specifically its direction that Federal agencies address environmental justice ''to the greatest extent practicable and permitted by law.'' The commenter also suggested that, in areas where EPA has discretion, EPA should consider environmental justice concerns to the greatest extent practicable when exercising that discretion.

Response: EPA recognizes that it has discretion in issuing a clean data determination. We have considered the information raised by the commenters and information submitted by the State, as well as air quality trends in the area and control measures that would address ozone pollution. We acknowledge the environmental justice considerations for this area (see discussion above). We note that there are many Federal measures, both for point sources and mobile sources, that will continue to require reductions in ozone precursor pollutants. All monitors in the nonattainment area must have a design value *i.e.,* 3-year average of the 4th high maximum daily 8-hour average, at or below the NAAQS to show attainment. We have also assessed critical concentration values for the Detroit area that the Detroit area would need to record in the 2023 ozone season in order for the area to have a violating design value for the 2021–2023 period. The critical value for Allen Park is 0.073 ppm, and all other monitoring sites have critical values of 0.075 ppm or higher. By comparison, three monitors in the Detroit area had critical values of 0.071 ppm for the 2022 ozone season for the 2020–2022 period. We therefore exercise our discretion to issue the clean data determination.

Comment: Several commenters raised concerns with the Stellantis Mack Avenue Auto Assembly Plant located in Wayne County. GLELC referenced a complaint filed under title VI of the Civil Rights Act regarding permits issued by EGLE for this facility.

Response: This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2020–2022 design period showing that the area achieved attainment of the 2015 ozone NAAQS, based on the exclusion of certain exceedances of the 2015 ozone NAAQS that were due to exceptional events. EPA acknowledges comments regarding a pending title VI complaint and notes that the title VI complaint process is a separate legal process from this clean data determination.

Commenters have raised concerns regarding VOC emissions from the Stellantis facility. EPA's concern in this action is whether ambient ozone data support a determination that the Detroit area has attained the 2015 ozone NAAQS. This determination does not take emissions allowed under any individual permit, like that of the Stellantis-Mack Ave. Assembly Plant, into consideration, but instead evaluates aggregate area-level ozone concentrations. Pursuant to that evaluation, the area continues to attain the 2015 ozone NAAQs.

As noted by commenters, EPA is actively engaged in negotiations toward resolution of a claim of discrimination regarding the Stellantis facility, which was filed by GLELC under title VI of the Civil Rights Act. EPA believes it would be inappropriate to discuss the confidential matters in the case investigation here.

B. Exceptional Events Demonstration

Comment: The commentors stated, ''Regarding the Ozone Exceptional Event Demonstration, the Commenters believe that EGLE has not met its high evidentiary burden by failing to adequately demonstrate that wildfire smoke from Northern Canada traveled to the East 7 Mile monitor on June 24 and 25, 2022 . . .''

Response: EPA's technical support document for the review of EGLE's exceptional events demonstration describes EPA's finding that EGLE adequately demonstrated that wildfire smoke from Northern Canada traveled to the East 7-Mile monitor on June 24 and 25, 2022. Further responses to comments provide additional detail about how the ozone exceedances at East 7-Mile were due to wildfire smoke, as indicated by measurements of Brown Carbon (BrC), which is a by-product of incomplete combustion and thus an indicator of wildfire smoke. Smoke from wildfires in Saskatchewan and Manitoba Provinces, Canada was transported into the Detroit area throughout the week of June 20, 2022. By June 23, 2022, smoke from these fires had reached southern Ontario at the Michigan border. Northerly winds on June 23, 2022 transported the smoke to Detroit, and a cold front moved through the Detroit area on June 23, 2022, bringing air and wildfire emissions from Canada behind it. The air behind the cold front subsided, which allowed the air containing wildfire emissions aloft to sink to the surface. The presence of smoke from the Canadian wildfire behind this cold front resulted in atypical air quality for such a frontal passage. Although meteorological conditions were stagnant on June 24–25, 2022, under a surface high pressure, the Canadian wildfire emissions had already been transported to the area prior and contributed to elevated ozone concentrations.

After the passage of the cold front on June 23, 2022, a spike in BrC, which is a by-product of incomplete combustion and thus an indicator of wildfire smoke, was measured at the Dearborn monitoring site. The spikes in the BrC data leading up to and including June 24 and June 25, 2022, show there were elevated levels of woodsmoke in the air mass in the Detroit area. HYSPLIT forward trajectory analyses from the Saskatchewan and Manitoba fires depict smoke from these fires reaching southern Ontario at the Michigan border on June 23, 2022. HYSPLIT back trajectory analyses from the East 7-mile monitor depict smoke-filled air from this region reaching the Great Lakes region and impacting the surface in southern Michigan and Detroit at the time of the exceedances. The timing of the HYSPLIT trajectory endpoints, both the forward and backward trajectories, align with the timing of the smoke movement in the National Oceanic and Atmospheric Administration (NOAA) Hazard Mapping System (HMS) maps and with the meteorological features in the National Weather Service surface and 850 mb maps, to depict movement and retention of smoke from the Canadian fires to the East 7-Mile monitor on the exceedance days. The EGLE demonstration, prepared with early engagement and feedback from EPA as it was being developed, includes technical analysis generated by the State of Michigan which EPA considered, using a weight of evidence approach, in evaluating whether to reach a decision to concur with the demonstration. As discussed in more detail in EPA's response to comment about the matching day analysis, the meteorological conditions on the exceedance days examined in conjunction with local and background emissions do not present the conditions conducive to producing elevated ozone concentrations. EPA ultimately concluded that the exceedances at issue were due to wildfire smoke, rather than local pollution. Further comments will discuss our analysis in more detail.

Comment: The commentors stated, ''(EGLE) has failed to establish a clear causal relationship between the wildfire smoke from Northern Canada and the exceedance of the ozone NAAQS at the East 7-Mile monitor on the days in question.''

Response: EPA has carefully analyzed the information submitted by EGLE to establish a clear causal relationship between the wildfire smoke from Northern Canada and the exceedance of the ozone NAAQS at the East 7-Mile monitor on the days in question. Using a weight of evidence approach supported by the previously discussed back trajectory analyses, along with local and regional meteorological evidence, a matching day analysis, and the presence of surface level BrC concentrations, EPA has concluded that a clear causal relationship exists between the event and monitored exceedances.

This conclusion is supported by local and regional meteorological evidence, and by a matching day analysis.

Ozone formation and transport are highly dependent upon meteorology. Therefore, a comparison between ozone on similar meteorological days with and without fire impacts could support a clear causal relationship between the wildfire event and the monitored concentration. Significant differences in ozone concentrations among days with similar meteorology may indicate influences from non-typical sources such as a wildfire. ''EPA Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,'' identifies a matching day analysis as an acceptable method to support the demonstration of a clear causal relationship between the wildfire event's emissions and the monitored ground-level ozone concentrations.

EGLE submitted a matching day analysis, and, after careful consideration, EPA concluded that it was an appropriate factor to consider in the weight-of-evidence approach.

In ''EPA Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,'' we explained that meteorological variables to include in a matching day analysis should be based on the parameters that are known to strongly affect ozone concentrations in the vicinity of the monitor location. EPA's guidance states that these variables may include: daily high temperature, hourly temperature, surface wind speed and direction, upper air temperature and pressure, relative or absolute humidity, atmospheric stability, cloud cover, solar irradiance, and others as appropriate. A matching day analysis of this type, when combined with a comparison of the qualitative description of the synoptic scale weather pattern (*e.g.,* cold front location, high pressure system location), can show that the fire contributed to elevated ozone concentrations.

EPA evaluated EGLE's approach to identify meteorologically similar days and concluded their analysis was consistent with EPA guidance. Furthermore, EPA agreed with ELGE's conclusion, based on meteorologically similar days, that there would not have been an ozone exceedance under similar meteorological conditions without the presence of wildfire smoke.

EPA determined that EGLE correctly applied the approach outlined in EPA's guidance, by identifying similar days through assessment of synoptic and local meteorological conditions. EGLE appropriately identified daily meteorological parameters such as maximum temperature, average temperature, average relative humidity, average wind speed and direction, average mean sea level pressure, 850 mb temperature, 850 mb wind speed and direction, 500 mb wind speed and direction, mixing level ratio (MLR), lifted condensation level (LCL), convective available potential energy (CAPE), 1,000 to 500 mb thickness, and total daily global horizontal irradiance (GHI). Further, EGLE appropriately determined thresholds for maximum temperature, average temperature, average relative humidity, average wind speed, and average wind direction. EGLE removed from its analysis days that fell outside of the set thresholds because the meteorology was not considered similar. Once the remaining matching days were left, EGLE analyzed upper air meteorology conditions, smoke influence, HYSPLIT, and precipitation to establish the final days for the matching day analysis.

EPA agrees with EGLE's finding that meteorological parameters that strongly affect ozone concentrations in southeast Michigan consist of maximum temperature, average temperature, surface wind speed, surface wind direction, upper-level (850 mb) temperature, and upper-level wind flow (850 mb and 500 mb), and EPA therefore determined that EGLE's selection of these parameters for the matching day analysis was appropriate.

Typical meteorological conditions for high ozone days in the Detroit area consist of southerly winds at the surface and aloft, along with a multiday buildup of pollutants. Table 6 in EGLE's demonstration depicts the exceptional event days and matching days meteorological parameters, as well as the MDA8 ozone concentrations on those days, which were 61 ppb or less on the days with matching meteorological conditions.

EGLE's matching day analysis establishes that, absent some atypical circumstances, local ozone formation in southeast Michigan is not likely to occur under the meteorological conditions present, as it was on June 24 and June 25, 2022. Although conditions that day were stagnant and temperatures were warm (conditions often conducive for local ozone production), these factors were offset by a northerly component to the wind at 850 mb. Typically, winds from this direction would prevent the southerly air flow that can lead to increased ozone concentrations, and would provide clean air to southeast Michigan resulting in lower ozone concentrations than values observed on June 24, 2022, and June 25, 2022. Nevertheless, on June 24, 2022, the first ozone exceedance day of this episode occurred under these atypical meteorological conditions for high ozone days such as the 850 mb northerly wind.

EGLE's matching day analysis identified several matching days with northerly flow at 850 mb. All the matching days had MDA8 ozone concentrations below 70 ppb, with one of the days having a MDA8 of just 41 ppb. The similar weather patterns and supplementary meteorological parameters between the exceptional event days and matching days depict that, on similar meteorological days, ozone concentrations would be well below the standard, providing additional evidence that a non-typical source aided in ozone concentrations exceeding the standard. This data strongly suggests that the exceedances occurring on June 24, 2022, and June 25, 2022, were caused by an exceptional event, in this case wildfire smoke from Canada.

EPA's conclusion is further supported by the presence of BrC.

Local ground-based measurements of BrC, a by-product of incomplete combustion, is an indicator of wildfire smoke. The clear causal relationship between the wildfire smoke from Northern Canada and the exceedance of the ozone NAAQS at the East 7-Mile monitor on the days is further established by the presence of BrC in the Detroit area on the days leading up to and including June 24, 2022, and June 25, 2022. Typically with the passage of a cold front, pollutant concentrations are expected to decrease, but after the passage of the cold front on June 23, 2022, a spike in BrC was measured at the Dearborn monitoring site at the ground level. The cold front brought air and wildfire emissions from Canada behind it and blocked transport from the fires south of Michigan that were previously impacting southeast Michigan. The spikes in the BrC data leading up to and including June 24, 2022, and June 25, 2022, show there were elevated levels of woodsmoke in the air mass in the Detroit area and are an indicator of surface level smoke. Although smoke from fires south of Michigan likely affected the area from June 20 to June 21, 2022, the source of smoke for June 23 to June 25, 2022 are the Canadian wildfires according to the HYSPLIT back trajectories and the placement of the cold front that advanced through the area. Ozone concentrations violated the standard after the winds shifted from a southerly flow to a northerly component at 850 mb after the passage of the cold front providing further evidence of Canadian wildfire smoke impacts on southeast Michigan.

Comment: The commenters stated that EPA's approach for states to submit a demonstration and for EPA to evaluate the submittal using a weight of evidence approach, is biased. The commenters noted, ''The state or local air agency that submits a demonstration is a proponent of the demonstration, and therefore has incentive to either ignore or downplay evidence that is unfavorable to the demonstration. [internal footnote deleted] EPA's limitation of other evidence to that 'otherwise known to the agency' abdicates EPA's duty to environmental justice communities. Such communities may not have the technical expertise to make relevant, unfavorable evidence 'known to the agency.' Thus, EPA's approach is inherently biased in favor of granting exceptional event exclusions.''

Response: EPA's requirements for exceptional events submittals require the State to provide notice and opportunity for public comment at the State level prior to submitting an exceptional event demonstration to EPA. As part of this process, additional supportive or non-supportive evidence can be provided. In the 2016 Revisions to the Exceptional Events Rule: Update to Frequently Asked Questions, EPA recommends air agencies consult with their EPA regional office to identify which types of analyses may be most useful in supporting the weight of evidence for a clear causal relationship, and to rule out analyses that may be unnecessary. The EGLE public comment period began on December 19, 2022, and concluded on January 18, 2023. EPA's evaluation of the exceptional event, using the weight of evidence approach, considers the demonstration submitted by the State as well as the comments received during the State's public comment period.

EPA's responsibility is to use its technical expertise to evaluate the State demonstration and public comments to inform a decision regarding concurrence or nonconcurrence of the exceptional event. We can also defer an exceptional event decision if we determine that the demonstration does not have regulatory significance. With regard to the commenters' concern about the ability of communities with environmental justice (EJ) concerns to effectively make relevant, unfavorable evidence known to the agency, EPA is committed to the meaningful involvement and fair treatment of communities with EJ concerns in the context of the regulatory action. If EPA's independent technical analysis of a State's exceptional event demonstration leads us to conclude that the demonstration is deficient in its evidence or analysis and EPA requires additional information, EPA will request that the State provide the information, if available. If such information cannot be provided and EPA is unable to access such information independently, that may lead to a nonconcurrence decision. In the event that EPA has evidence that supports a decision on an exceptional event demonstration contrary to what a State has attempted to establish, EPA will consider such evidence.

Comment: The commenters stated, ''EPA's rush to carry out a clean data determination is particularly problematic here, because EPA dragged its heels in designating the area nonattainment in the first place and later reclassifying the area to Moderate, and only did so in each instance as the result of a citizens' suit. By itself, this is arbitrary and capricious behavior. At a minimum, EPA has the discretion to wait for this summer's ozone season to see if the area will continue to attain the standards.''

Response: As described in the preamble to EPA's October 3, 2016, Final Exceptional Events Rule (81 FR 68216, 68267–68268), EPA is committed to work collaboratively with air agencies as they prepare exceptional event demonstrations. This collaboration, communication, and engagement between EPA and the State is expected to occur throughout the duration of the exceptional events process beginning with the initial notification of the potential exceptional event, and continue through the State's public comment period and formal submittal of the demonstration to EPA. It also describes how EPA will generally give priority to exceptional events determinations that may affect near-term regulatory decisions, such as EPA's action on SIP submittals, NAAQS designations and clean data determinations, and states EPA's intent to make decisions regarding event status expeditiously following submittal of a complete demonstration if required by a near-term regulatory action.

For the Southeast Michigan exceptional event demonstration submitted to EPA on January 26, 2023, EPA had provided EGLE feedback prior to its public comment period, which began on December 19, 2022. Due to the pending final action on EGLE's redesignation request for the Detroit area, proposed in April 2022 but not finalized pending the evaluation of the area 2022 ozone season data, EPA recognized the high priority of evaluating EGLE's demonstration. EGLE's public comment period on its exceptional events demonstration concluded on January 18, 2023, and EGLE submitted the demonstration and response to comments to EPA on January 26, 2023. EPA began reviewing and drafting its concurrence TSD while EGLE's demonstration was open for public comment and during the period that EGLE prepared its response to public comments. Because EGLE's demonstration submittal to EPA on January 26, 2023, was substantially similar to the version of the demonstration that had been available during the State public comment period, EPA was able to expeditiously review the comments EGLE received on the demonstration and concur on EGLE's demonstration on January 30, 2023.

Comment: The commenters stated, ''In simple terms, EGLE only relies on data from the handful of days with the worst ozone pollution to determine whether or not an area is attaining the ozone NAAQS. By their very nature, most if not all of the MDA8 ozone concentrations that EGLE may want to exclude from their design value will be among the worst at that given monitor in any given year.''

Response: The exceptional events rule was written to apply to any criteria pollutant NAAQS per 40 CR 50.14(a)(1)(ii). Under 40 CFR part 50 appendix U(4)(a), the 2015 ozone NAAQS are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest Maximum Daily 8-Hour Average (MDA8) ozone concentration (*i.e.,* the form of the standard) is less than or equal to 0.070 ppm. Due to the form of the 2015 ozone NAAQS, for the data to be regulatory significant, the data will likely be in a high percentile of the 5-year distribution or one of the four highest within one year.

An exceptional event demonstration must have regulatory significance, which means that it would affect a regulatory determination by the Administrator, as specified in 40 CFR

50.14(a)(1)(i). The determination of whether the demonstration has regulatory significance is a separate evaluation from whether the demonstration has established a clear causal relationship between the event and the monitored exceedance or violation.

Comment: The commenters stated, ''EGLE also suggests that an increase in the MDA8 of 30 parts per billion from June 23 to June 24, 2022, is exceptional. However, EGLE also provides that this increase is far from unprecedented as it has happened at least three other times in the past five years. [internal footnote deleted]''

Response: The East 7-Mile monitoring station has seen an increase of 30 ppb or more from one day to the next on five occasions in the last five years. Only three out of the five occasions led to concentrations above 70 ppb, with one of these instances being June 24, 2022, the exceptional event day. Michigan's ozone season begins March 1 and ends October 31 each year, 246 days per year. This suggests that this 30 ppb increase from one day to the next, occurring just 3 out of 1,231 monitoring days, is a rare circumstance. However, whether such an increase is termed ''exceptional'', ''unprecedented'', or not, other information included in EGLE's demonstration—the evidence supporting the clear causal relationship between the wildfires and the exceedances, the evidence of the uniqueness of the concentrations compared to those for the past five years, and the conclusions of the matching day analysis of similar meteorological days, support EPA's concurrence without consideration of the significance of the 30 ppb increase.

Comment: The commenters stated, ''During none of the previous five years has EGLE sought to exclude ozone data from the East 7-Mile monitor because it was impacted by wildfire smoke. Additionally, there have been eight instances in recent years when ozone concentrations at the East 7-Mile monitor have increased between 25 and 29 ppb from one day to the next. [internal footnote deleted] This illustrates that significant increases in the MDA8 up to 30 ppb is not a rare occurrence and has happened numerous times in the absence of any exceptional event.''

Response: EGLE's decision to seek or not seek to exclude other ozone data from consideration by EPA is irrelevant to EPA's exceptional event decision here. Wildfire smoke can impact air quality or ozone concentrations on days that do not have regulatory significance. As stated in a previous response, whether an increase greater than 25 ppb is termed ''exceptional'', ''unprecedented'', or not, other information included in EGLE's demonstration is sufficient for EPA to determine concurrence without consideration of the significance of the increase.

Comment: The commenters stated, ''It is well established that $PM_{2.5}$ is a more relevant pollutant to utilize for the multi-pollutant corroboration analysis than PM_{10}. [internal footnotes deleted] This is noted by the EPA in its recently updated Frequently Asked Questions regarding the Exceptional Events Rule which states 'elevated $PM_{2.5}$ . . . may be an indicator of smoke, and therefore may provide supporting evidence that elevated ozone in the same area was at least partially attributable to a wildfire event.' [internal footnotes deleted] The EPA also cautions against relying on PM_{10} concentrations as an indicator of smoke because 'PM_{10} generally tends to 'fall' to ground level relatively quickly in the vicinity of the event and, in our experience, is not usually subject to long range transport.' [internal footnotes deleted] Despite this clear EPA guidance stating that Michigan should rely on $PM_{2.5}$ data rather than PM_{10} data to support exceptional event demonstrations related to wildfires, the Ozone Exceptional Event Demonstration relies primarily on PM_{10}.''

Response: According to EPA's ''Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,'' air agencies can use example evidence such as concentrations of supporting ground level measurements including particulate matter (mass or speciation) to demonstrate that wildfire emissions were present at the altitude of the monitor. The Guidance also suggests including ''Plots of co-located or nearby CO, $PM_{2.5}$, PM_{10}, or O_3 and $PM_{2.5}$ precursor concentrations . . .'' EGLE evaluated their PM_{10} concentrations but did not rely solely on PM_{10} concentrations for their multi-pollutant corroboration. To expand commenter's quote from the recently updated Frequently Asked Questions document regarding PM_{10} and smoke: ''PM_{10} generally tends to ''fall'' to ground level relatively quickly in the vicinity of the event and, in our experience, is not usually subject to long-range transport. However, all demonstrations are evaluated case-by-case based on the weight of evidence''. EPA's evaluation of EGLE's demonstration considered the BrC data measured for determining surface-level smoke in the days leading up to the event, as well as the event days. EPA recognizes that long-range transport of wildfire smoke would not typically have an impact on nearby PM_{10}.

Comment: The commenters stated, ''EGLE's LADCO [Lake Michigan Air Directors Consortium] screening analysis does not support a finding that wildfire smoke was present in the Detroit area during on June 24 or 25, 2022.''

Response: EPA evaluated and considered all the information provided in EGLE's demonstration and EPA's Technical Support Document (TSD) describes which analyses EGLE provided that EPA found to be persuasive. EPA did not rely on all evidence provided in EGLE's demonstration. EPA reviews exceptional events demonstrations on a case-by-case basis using a weight of evidence approach considering the specifics of the individual event. EGLE's LADCO screening analysis is one piece of evidence to identify the potential for smoke influences on surface air quality conditions using the variability of ozone and $PM_{2.5}$ data with input from smoke maps. $PM_{2.5}$ concentrations can be comprised of many components, including sulfates, nitrates, metals, organic and elemental carbon, as well as many other species. The LADCO analysis does not show a high peak (representing high 24-hr $PM_{2.5}$ concentrations) for $PM_{2.5}$ during this time period, however, EGLE's demonstration includes analysis of hourly BrC data from their air monitoring network for this period of time. BrC particles are released by the combustion of organic matter and are an indicator of the presence of wildfire smoke. The HMS maps, HYSPLIT back trajectories, upper-level and surface weather maps, and BrC data provide evidence that wildfire smoke was present in the Detroit area, as well as at the ground level where measurements are made.

Comment: The commenters stated, ''First, EGLE has unjustifiably limited its matching day analysis to identifying days with similar meteorological conditions in the past four years (2022–2019) rather than the past five years (2022–2018).''

Response: According to EPA's ''Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,'' since high ozone days may be relatively rare, air agencies should examine several years of data for similar meteorology versus restricting the analysis to high ozone days only. EGLE searched for similar meteorological days over a 3-year period, consistent with the most recent design value period. During EGLE's search for similar meteorological days, EGLE initially analyzed years 2020–2022 but due to unusual circumstances of matching days and smoke influence, EGLE expanded its analysis to include 2019. Adding the additional year provided enough similar meteorological days for a matching day analysis.

Comment: The commenters stated, ''Second, EGLE states that even within the unjustifiably limited 4 year period it used for its matching day analysis, it utilized HYSPLIT trajectories and smoke maps to determine whether 'smoke existed over the region' on certain days and excluded those days from its matching day analysis. [internal footnote deleted] EGLE has not submitted any other exceptional event demonstration in the past 5 years to justify excluding any other ozone data collected by the East 7-Mile monitor from regulatory use.''

Response: EPA's ''Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations'' notes a comparison between ozone on meteorologically similar days with and without fire impacts could support a clear causal relationship between the fire and the monitored concentration. Supporting documentation used in a matching day analysis to demonstrate a day has potential smoke influence is not subject to the same level of rigor and evaluation as described in the exceptional event rule for exceptional events. Furthermore, wildfire smoke can impact air quality or ozone concentrations on days that do not have regulatory significance, and days without regulatory significance would not qualify for consideration under the exceptional events rule, so not all days with smoke are identified or pursued for evaluation according to the exceptional events rule. To identify and omit matching days from the matching day analysis that may have had smoke influence, EGLE evaluated smoke maps and HYSPLIT back trajectories. If their evaluation depicted any potential smoke influence on the matching day concentrations, the day was excluded from the matching day analysis.

Comment: ''The Commenters disagree with EGLE's assertion that it is not required to assess local emissions sources and their impacts on ozone pollution at the East 7-Mile monitor on June 24 and 25, 2022. [internal footnote deleted]'' The commenters also stated, ''However, many monitors throughout the Detroit area showed increases in NO_X concentrations from June 23rd to the 24th. [internal footnote deleted]''

Response: Air pollution concentrations can increase due to increased emissions, or decreased dispersion of local emissions. EPA recognizes meteorological conditions were stagnant on June 24–25, 2022, which could be an explanation for increases in NO_X concentrations. However, wildfire emissions had residual NO_X which had already been transported to the area and contributed to the ozone precursor emissions that resulted in increased ozone production. Some typical meteorological conditions for high ozone days in Detroit were present on the matching day analysis and the exceptional event days but the northerly wind component aloft is atypical for such days. The northerly wind aloft usually brings in cleaner air to Detroit but for this exceptional event, that was not the case. EPA's review of the demonstration concluded that wildfire smoke affected air quality at the monitoring site; however, it did not suggest that local sources of pollution were not also contributing precursor emissions that potentially contributed to the higher ozone concentrations observed at the East 7-Mile monitoring site on June 24–25, 2022.

Comment: The commenters stated, ''Given the limitations of EGLE's exceptional event demonstration regarding the matching day analysis and multi-pollutant corroboration analysis and the complicating factors discussed in the paragraph above, it is necessary for EGLE to conduct both a statistical regression modeling analysis and a photochemical modeling analysis.''

Response: Neither the exceptional event rule nor the guidance requires all analyses identified in the guidance, such as a statistical regression modeling analysis and a photochemical modeling analysis, as necessary for a successful demonstration to illustrate the clear causal connection between the wildfire and the monitored concentration. EPA's ''Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentration'' states ''The EPA does not expect an air agency to prepare all identified analyses but only those that add to their weight of evidence supporting the clear causal relationship. As with all exceptional events demonstrations, the submitting air agency and the EPA Regional office should discuss the appropriate level of evidence during the Initial Notification process.'' In this instance, EGLE provided the appropriate level of evidence, and EPA's analysis believes the evidence put forth by EGLE is sufficient to demonstrate a clear causal relationship between the fire and the monitored ozone exceedances June 24–25, 2022.

Comment: The commenters stated, ''EGLE has failed to comply with public notification requirements for the exceptional event.''

Response: EGLE's demonstration met the public notification requirement for this event. EGLE's air quality forecasts and real-time continuous data provided the public notice of Unhealthy for Sensitive Groups (USG) Air Quality Index (AQI) ozone concentrations on June 24 and June 25, 2022, after ambient concentrations of ozone rose quickly due to the distant Canadian fires. Data from the air monitors are provided, in near-real time, to EPA's AIRNOW website as well as Michigan EGLE's website (*http://www.deqmiair.org/*). Furthermore, a Clean Air Action Day was issued for southeast Michigan for June 25, 2022. Such days are publicly announced the day before ozone concentrations are forecasted to reach the USG AQI category.

Comment: The commenters stated, ''Additionally, EGLE claims it's not required to submit a mitigation plan but also claims that the East 7-Mile monitor has been impacted by wildfire smoke several times over the past four years. [internal footnotes deleted] EGLE cannot have it both ways—it cannot exclude data from its matching day analysis by claiming it was impacted by wildfire smoke without submitting an exceptional event demonstration while also claiming it's not required to submit a mitigation plan to the EPA because it hasn't had recurring issues regarding wildfire smoke at the East 7-Mile monitor.''

Response: See response above regarding exceptional event demonstrations and regulatory significance. Per 40 CFR part 51(b)(1)(i), generally areas subject to the mitigation requirements have experienced three events or three seasons of events of the same type and pollutant in a 3-year period and have submitted a demonstration or an initial notification of a potential exceptional event. Per EPA's Mitigation Plan action on May 12, 2022 (87 FR 29045), EPA did not identify Michigan as an area subject to mitigation plan requirements.

C. Clean Data Policy

Comment: The commenters asserted that EPA's original Clean Data Policy, as set forth in the May 10, 1995, memorandum from John Seitz, stated that EPA would annually review monitoring data and revoke the clean data determination if the area subsequently violated the standard.[6] The commenters also noted that under the memorandum states were required to continue to operate an ambient air quality monitoring network in accordance with EPA rules for such networks. The commenters contend that EPA's rules do not create any regulatory requirement for EPA to annually review monitoring data to verify that it still qualifies for suspension of planning requirements and, consequently, EPA fails to create a mandatory deadline for such review. The commenters further contended that this lack of a mandatory deadline is inconsistent with other provisions in the CAA which establish mandatory deadlines for EPA to determine whether an area is attaining the NAAQS, specifically, the designation of nonattainment areas (two years from promulgation of a standard), determination of attainment by the attainment date (six months from the attainment date), and action on maintenance plans and redesignation requests (18 months from submittal). Finally, the commenters asserted that EPA has not codified the requirement for continued operation of the monitoring network.

Response: As the commenters note, EPA initially issued the Clean Data Policy in a 1995 memorandum from John Seitz. The approach set forth in the memorandum was subsequently codified for the 1997, 2008, and 2015 ozone NAAQS.[7] EPA's longstanding Clean Data Policy has been upheld by the D.C. Circuit and all other courts that have considered it.[8]

In this rule, EPA is determining that the Detroit area has attained the 2015 ozone NAAQS and is suspending the requirements for the area to submit attainment demonstrations and associated Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP) plans, contingency measures for failure to attain or make reasonable progress, and other planning State Implementation Plans (SIPs) related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS, in accordance with provisions set forth at 40 CFR 51.1318. The commenters raise structural and statutory objections to the Clean Data Policy provisions of 40 CFR 51.1318. These comments are not relevant to EPA's determination of attainment with respect to the Detroit area and should more properly have been raised in the context of the 2015 Ozone NAAQS Implementation Rule,[9] which contained that provision.

The 2015 Ozone NAAQS Implementation Rule was promulgated through notice and comment rulemaking and subject to the judicial review provisions of section 307(b) of the CAA. CAA section 307(b)(1) allows petitioners to challenge any of EPA's final actions in the appropriate U.S. Court of Appeals, and states that ''[a]ny petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the **Federal Register**.'' Further, any such judicial review is limited to only those objections that were raised with reasonable specificity in timely comments.[10] In the case of the Implementation Rule for the 2015 ozone NAAQS, petitions for judicial review were required to be filed in the United States Court of Appeals for the District of Columbia Circuit by February 4, 2019. There is an exception to the 60-day time limit, but it only applies ''if such petition is based solely on grounds arising after such sixtieth day,'' and ''then any petition for review under this subsection shall be filed within sixty days after such grounds arise.''

The commenters did not submit comments regarding the provisions of 40 CFR 51.1318 during the comment period for the 2015 Ozone NAAQS Implementation Rule. The deadline for filing a petition for review on the 2015 Ozone NAAQS Implementation Rule has passed. Further, the comments raised by the commenters cannot be characterized as ''grounds arising after'' the deadline for filing a petition, as they relate to structural concerns with EPA's administration of the Clean Data Policy and existed at the time EPA promulgated the Implementation Rule.

While the comments fall outside the scope of this rulemaking, EPA would like to note that the Seitz memorandum does not specifically set forth an annual deadline for review of monitoring data and revocation of the suspension if the area is violating the standard, but rather explains that the clean data determination and suspension of the obligation to submit certain attainment-related planning requirements, ''would be contingent on the existence of monitoring data for the areas that continue to demonstrate attainment'' and goes on to state that ''If EPA subsequently determines that an area has violated the standard, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist.'' Similarly, the clean data provisions codified at 40 CFR 51.1318 for the 2015 ozone NAAQS state that the planning SIPs related to attainment of the ozone NAAQS for which the determination has been made shall be suspended until such time as, ''the EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans.'' States must continue to operate approved air quality monitoring networks and report air quality monitoring data to EPA in accordance with 40 CFR part 58. Per 40 CFR 58.15, states, or where appropriate local, agencies shall submit to EPA an annual monitoring data certification letter to certify data collected by FRM, FEM, and ARM monitors at SLAMS and SPM sites meet criteria in appendix A to this part from January 1 to December 31 of the previous year. The annual data certification letter is due by May 1 of each year. The certified data can be used to determine whether areas continue to attain the NAAQS.

D. Other Issues in the Area

Comment: The commenters stated, ''EPA has not codified the process for annual review of the qualification of an area's status and revocation of the suspension if the area is violating the standards. Nor has EPA codified the requirements for continued operation of the monitoring network. Thus, EPA's rulemakings have left these details unaddressed.''

Response: With regard to the comment regarding EPA's codification of the process for annual review of the area's status and revocation of the suspension if the area is violating the standards, please see EPA's Response to Comments regarding the Clean Data Policy. With regard to the comment regarding requirements for continued operation of the monitoring network, as described below, the State's monitoring network must operate according to the design criteria in 40 CFR appendix D, and modification of the air monitoring

[6] May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard.''

[7] *See* 40 CFR 51.918, 40 CFR 51.1118, and 40 CFR 51.1318, respectively.

[8] The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered rulemakings applying EPA's Clean Data Policy and have consistently upheld them. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

[9] 83 FR 62998, December 6, 2018.

[10] CAA section 307(d)(7)(B).

network must meet criteria in 40 CFR 58.14 (c)(1). Design values are computed and published annually by EPA's Office of Air Quality Planning and Standards (OAQPS) and reviewed in conjunction with the EPA Regional Offices.

Comment: The commenters stated, ''Finally, EPA has left unaddressed the problem that a State might not maintain its ambient air quality monitoring network sufficiently for EPA to make its annual determination. If this occurs, EPA must revoke the suspension, and EPA must commit to this process by rule.''

Response: EPA has specific design criteria for ozone monitoring networks described in 40 CFR part 58 appendix D. The minimum number of ozone monitors required to operate in a Metropolitan Statistical Area (MSA) is determined by the population size and the most recent 3-year design values per table D–2 of appendix D to part 58 in 40 CFR. Applying the minimum network design criteria to the Detroit metropolitan statistical area, EGLE operates three more ozone monitoring sites than the minimum required number. No ozone monitors are eligible for shutdown unless the monitor has shown attainment during the previous five years of monitoring and has a less than 10 percent likelihood of exceeding 80 percent of any NAAQS over the next three years per 40 CFR 58.14(c)(1). Thus, monitors which are registering concentrations close to the NAAQS, including those showing attainment, are not eligible to be discontinued. Also under 40 CFR 58.14 (c)(1), in a nonattainment or maintenance area, if the most recent attainment plan or maintenance plan adopted by the State and approved by EPA contains a contingency measure to be triggered by an air quality concentration and the monitor to be discontinued is the only State or Local Air Monitoring Stations (SLAMS) monitor operating in the nonattainment or maintenance area, the monitor may not be discontinued. The ozone monitoring network in the Detroit Nonattainment Area has historically monitored ozone at more than the minimum required number of monitoring sites, and according to EGLE's Annual Ambient Air Monitoring Network Review Plan for 2023, there are no changes expected to the ozone monitoring network in Detroit.

Comment: GLELC referenced EPA's March 14, 2022, proposal to redesignate the Detroit area to attainment, based in part on air quality data from 2019–2021 showing attainment of the 2015 ozone NAAQS. The commenter claims that to redesignate the Detroit area in 2023, EPA ''must use the three-year period 2021–2023 for the ozone design value.'' The commenter also asserts that, to redesignate an ozone nonattainment area with Moderate classification, provisions for RACT must be approved into the Michigan SIP.

Response: As noted in EPA's February 3, 2023, proposal to determine that the Detroit area attained the 2015 ozone NAAQS, this final action is limited to a clean data determination. EPA is addressing final action on EGLE's January 3, 2022, redesignation request in a separate action, and EPA is responding to comments relevant to the redesignation, including issues raised by GLELC regarding recent monitoring data and the area's Moderate classification, in that separate action.

Comment: Several commenters questioned EPA's method of data collection, or suggested that EPA review additional sources of information, including data showing local emission levels. One comment recommended that EPA consider impacts from the COVID–19 pandemic, as well as a chip shortage affecting auto manufacturing. Another comment suggested that Wayne County should have an additional monitoring site.

Response: In the February 3, 2023, proposed rulemaking, EPA explained that under the Clean Data Policy, EPA may make a clean data determination if a nonattainment area meets the 2015 ozone NAAQS based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. Data regarding local emission levels, or temporary drops in emission levels due to temporarily adverse economic conditions, may be relevant to other rulemakings including redesignations to attainment under CAA section 107(d)(3)(E). However, these factors are beyond the scope of a clean data determination, which is an assessment of whether an area is factually attaining the NAAQS. As discussed above, the existing monitors in the Detroit area meet all requirements for an ozone monitoring network. Further, to the extent that local emissions information may be relevant to EGLE's exceptional events demonstration, the discussion above explains EPA's concurrence on EGLE's analysis establishing a clear causal relationship between wildfire smoke and high ozone levels at the East 7-Mile monitor.

Comment: Several commenters raised concerns about local, State, or Federal Government. Some commenters criticized past actions by government agencies or government officials and noted distrust between Detroit residents and government bodies. Some commenters raised concerns regarding climate change.

Response: These concerns are also beyond the scope of this action.

III. Final Actions

EPA is making a determination that the Detroit area is attaining the 2015 ozone NAAQS, based upon complete, quality-assured, and certified ambient air monitoring data for the 2020–2022 design value period, after concurring on the exclusion of certain exceedances due to exceptional events. EPA is also taking final agency action on an exceptional events request submitted by EGLE on January 26, 2023, and concurred on by EPA on January 30, 2023, based on EPA's evaluation of the weight of evidence provided in EGLE's exceptional event demonstration. As a result of the clean data determination, EPA is suspending the requirements for the area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule suspends the requirements for the area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

This action makes a clean data determination for the Detroit area for the 2015 ozone NAAQS based on air quality data resulting in the suspension of certain Federal requirements and does not impose any additional requirements.

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review 13563, and Executive Order 14094: Modernizing Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866, 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by State law. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a State action implementing a Federal standard.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. Demographic data identifies that the Detroit area includes communities that are pollution-burdened and underserved. Further, EPA performed a screening-level analysis using EPA's EJSCREEN to identify environmental burdens and susceptible populations in communities in the Detroit area.

EPA believes that this action is not likely to change existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. While EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, this clean data determination for the 2015 ozone NAAQS would not exacerbate existing pollution exposure or burdens for populations in the Detroit area.

As discussed in the Response to Comments section of this preamble, there is no information to support a conclusion that EGLE's implementation of its 2015 ozone SIP would result in a disparate impact on minority populations (people of color and/or Indigenous peoples) and low-income populations.

K. Congressional Review Act

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

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 12, 2023.

Debra Shore,

Regional Administrator, Region 5.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for ''2015 Ozone Clean Data Determination'' immediately after the entry for ''Determination of failure to attain the 2010 SO_2 standard'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA—APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
*	*	*	*	* * *
2015 Ozone Clean Data Determination.	Detroit area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	....	5/19/2023, [INSERT **FEDERAL REGISTER** CITATION].	EPA's final determination suspends the requirements for EGLE to submit an attainment demonstration and other associated nonattainment planning requirements for the Detroit nonattainment area for as long as the area continues to attain the 2015 ozone NAAQS.
*	*	*	*	* * *

* * * * *

[FR Doc. 2023–10562 Filed 5–18–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2022–0004; FRL–9629–04–R5]

Air Plan Approval; Michigan; Redesignation of the Detroit, MI Area to Attainment of the 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its redesignation of the Detroit, Michigan area to attainment for the 2015 ozone National Ambient Air Quality Standards (NAAQS) in accordance with a request from the Michigan Department of Environment, Great Lakes, and Energy (EGLE). EGLE submitted this request on January 3, 2022. EPA is approving, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2035 in the Detroit area. EPA is also finding adequate and approving Michigan's 2025 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) motor vehicle emissions budgets (budgets) for the Detroit area. The Detroit area includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties.

DATES: This final rule is effective on May 19, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0004. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

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

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

I. Background

EPA is redesignating the Detroit area to attainment of the 2015 ozone standard, in accordance with EGLE's January 3, 2022, submission. The background for this action is discussed in detail in EPA's proposal, dated March 14, 2022 (87 FR 14210). In that proposal, we noted that, under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration (*i.e.,* the design value) is equal to or less than 0.070 parts per million (ppm), when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. (*See* 40 CFR 50.19 and appendix U to 40 CFR part 50.) Under the Clean Air Act (CAA), EPA may redesignate nonattainment areas to attainment if complete, quality-assured data show that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule provides a detailed discussion of how Michigan has met these CAA requirements and EPA's rationale for approving the redesignation request.

As discussed in the proposed rule, quality-assured and certified monitoring data for 2019–2021 show that the area has attained the 2015 ozone standard, and EPA has determined that the attainment is due to permanent and enforceable measures. In the maintenance plan submitted for the area, Michigan has demonstrated that compliance with the ozone standard will be maintained in the area through 2035. As also discussed in the proposed rule, Michigan has adopted 2025 and 2035 VOC and NO_X motor vehicle emissions budgets for the area that are supported by Michigan's maintenance demonstration.

Michigan has met the requirements applicable to redesignations through various SIP submittals. On July 6, 2022 (87 FR 40097), consistent with conditions identified in our proposed rulemaking, EPA approved portions of separate December 18, 2020, submittals as meeting the applicable requirements for a base year emissions inventory and an emissions statement program. In this rulemaking EPA is also approving, as a revision to the Michigan SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Detroit area in attainment of the 2015 ozone NAAQS through 2035. Additionally, EPA is finding adequate and approving Michigan's newly established 2025 and 2035 motor vehicle emissions budgets for NO_X and VOCs for the area. With these approvals of Michigan's SIP submissions, all SIP requirements applicable to redesignation are fully approved.

After publication of the proposed rule, EPA finalized two additional rulemakings related to the attainment status of the Detroit nonattainment area. First, on February 1, 2023, EPA found that the Detroit area failed to attain the 2015 ozone NAAQS by its Marginal attainment date of August 3, 2021, based on the area's design value as of the attainment date (*i.e.,* monitoring data from 2018–2020). As a result of that determination, the area was reclassified by operation of law to Moderate, with SIP submissions associated with the Moderate area classification due March 1, 2023 (88 FR 6633). As described below in EPA's response to comments, consistent with EPA's longstanding interpretation of CAA section 107(d)(3)(E)(ii) and (v), and as described in the final determination and classification, EPA's role is to assess whether Michigan adequately addressed all requirements applicable to redesignation that applied to Detroit on the date of EGLE's submittal (88 FR 6633, 6635). Because EGLE submitted a complete and approvable redesignation request on January 3, 2022, the Moderate area requirements that became due on March 1, 2023, are not applicable for purposes of this redesignation. Second, EPA has issued a determination that the area is attaining the 2015 ozone NAAQS based on air quality monitoring data from 2020–2022, *i.e.,* a clean data determination. In issuing the clean data determination, EPA took notice and comment on its concurrence on a January 26, 2023, exceptional events demonstration submitted by EGLE. The demonstration requested exclusion of wildfire event-influenced data from the 2020–2022 design value period for the 2015 ozone NAAQS for the Detroit nonattainment area.

II. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to any new air quality violations, increase the frequency or severity of any existing air quality violations, or delay timely attainment or any required interim emissions reductions or any other milestones. Transportation conformity continues to apply in areas redesignated to attainment with a maintenance plan, so the Detroit area will continue to be subject to transportation conformity requirements.

As shown in Table 1, Michigan's maintenance plan includes NO_X and VOC motor vehicle emission budgets (''budgets'') for the Detroit area for 2025, the interim year, and 2035, the last year of the maintenance period. The budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the Detroit area, are projected to result in air quality that either attains or maintains the NAAQS. These budgets represent the projected 2025 and 2035 on-road emissions plus a safety margin allocation and are consistent with the State's demonstration of maintenance of the 2015 ozone NAAQS. The safety margin and the allocation of a portion of it to the motor vehicle emissions budgets are described below. Detailed information on the transportation conformity program can be found in our March 14, 2022, proposed approval of Michigan's redesignation request (87 FR 14210).

TABLE 1—2025 AND 2035 BUDGETS FOR THE DETROIT AREA FOR THE 2015 OZONE NAAQS MAINTENANCE PLAN

[Tons per summer day]

	2025 Interim year			2035 Maintenance year		
	Projected on-road emissions	Safety margin allocation	Total budget	Projected on-road emissions	Safety margin allocation	Total budget
NO_X	61.20	43.15	104.35	40.30	62.11	102.41
VOCs	34.40	13.46	47.86	22.00	22.67	44.67

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. Further, the transportation conformity regulations allow states to allocate all or a portion of a documented safety margin to the motor vehicle emissions budgets for an area (40 CFR 93.124(a)). Michigan is allocating a considerable portion of that safety margin to the mobile source sector. Specifically, in 2025, Michigan is allocating 43.15 tons per summer day (TPSD) and 13.46 TPSD of the NO_X and VOC safety margins, respectively, representing approximately 65 percent of the available safety margins, to the motor vehicle emissions budgets. In 2035, Michigan is allocating 62.11 TPSD and 22.67 TPSD of the NO_X and VOC safety margins, respectively, representing approximately 65 percent of the available safety margins, to the motor vehicle emissions budgets. Since only a part of the safety margin is being used for this purpose, maintenance requirements are still met. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

III. Environmental Justice (EJ) Considerations

To identify environmental burdens and susceptible populations in communities in the Detroit area, EPA performed a screening-level analysis using EPA's EJ screening and mapping tool (''EJSCREEN'').[1] EPA utilized EJSCREEN to evaluate environmental and demographic indicators at the county level for each county within the area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).

EJSCREEN provides environmental indicators for 12 pollutants or sources, which include fine particulate matter ($PM_{2.5}$), ozone, air toxics cancer risk, traffic proximity, lead paint, Superfund site proximity, underground storage tanks, and wastewater discharge. Of the seven counties in the Detroit area, all but St. Clair County score at or above the 80th percentile nationally for at least one indicator: Livingston County for Superfund site proximity and wastewater; Macomb County for $PM_{2.5}$, traffic proximity, Superfund site proximity, and underground storage tanks; Monroe County for ozone; Oakland County for traffic proximity, underground storage tanks, and wastewater; Washtenaw County for underground storage tanks; and Wayne County for $PM_{2.5}$, air toxics cancer risk, traffic proximity, lead paint, underground storage tanks, and wastewater discharge.

EPA's screening-level analysis indicates that, of the seven counties in the Detroit area, only Wayne County scores above the national average for the EJSCREEN ''Demographic Index'', which is the average of an area's percent minority and percent low-income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898. As discussed in EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[2] As a function in part of its relatively high demographic index, Wayne County is the only county in the Detroit area scoring at or above the 80th percentile in at least one EJ Index, which is derived by combining a single environmental factor with the demographic indicator. Specifically, Wayne County has EJ Indexes above the 80th percentile in $PM_{2.5}$, ozone, traffic proximity, lead paint, and underground storage tanks. EPA has provided that if any of the EJ indexes for the areas under consideration are at or above the 80th percentile nationally, then further review may be appropriate.[3]

For further review, EPA has evaluated the ozone monitor trends and determined that all the monitors in the nonattainment area are similarly demonstrating attainment and therefore, there is no evidence that any one community is experiencing different air quality for this NAAQS from another. To consider whether the improvement in air quality has been observed throughout the area, including the portions of the area containing communities that are pollution-burdened and underserved, EPA conducted an additional analysis of historical ozone design values in the Detroit area. Specifically, EPA reviewed data from the seven monitors in the area that have been operating since the 2001–2003 design value period: the Macomb County monitor at New Haven with Site ID 26–099–0009, the Macomb County monitor at Warren with Site ID 26–099–1003, the Oakland County monitor at Oak Park with Site ID 26–125–0001, the St. Clair County monitor at Port Huron with Site ID 26–147–0005, the Washtenaw County monitor at Ypsilanti with Site ID 26–161–0008, the Wayne County monitor at Allen Park with Site ID 26–163–0001, and the Wayne County monitor at East 7 Mile with Site ID 26–163–0019. Ozone design values in the Detroit area have declined significantly from 0.097 ppm in 2001–2003 to 0.070 ppm in 2019–2021. As shown in Table 2, the improvement in air quality has been observed at every monitor in the Detroit area. Specifically, ozone design values at each monitor have improved by between 20% and 31%.

TABLE 2—IMPROVEMENT IN OZONE DESIGN VALUES BETWEEN THE 2001–2003 PERIOD AND 2019–2021 PERIOD

Monitor	2001–2003 Design value (ppm)	2010–2012 Design value (ppm)	2019–2021 Design value (ppm)	Improvement between 2001–2003 and 2019–2021 (%)
New Haven	0.097	0.078	0.068	30
Warren	0.095	0.079	0.066	31
Oak Park	0.091	0.078	0.069	24
Port Huron	0.090	0.077	0.070	22
Ypsilanti	0.091	0.076	0.066	27
Allen Park	0.084	0.074	0.067	20
East 7 Mile	0.091	0.081	0.070	23

Not only have ozone design values at all monitors improved by the relatively consistent margin of 20% to 31%, but the design values at all monitors have been relatively consistent within each 3-year period.

IV. Response to Comments

Upon publication of the March 14, 2022, proposed rulemaking, EPA opened a 30-day comment period, ending April 13, 2022 (87 FR 14210). On April 4, 2022, in response to a request from Sierra Club, EPA extended the comment period by an additional 14 days through April 27, 2022 (87 FR 19414). During the comment period EPA received three supportive comment letters and three adverse comment letters. Two adverse comment letters were submitted by students at the University of Michigan. The third adverse comment letter was submitted by Sierra Club and Great Lakes Environmental Law Center (GLELC), on behalf of themselves and 19 other groups based in Michigan. On March 14, 2023, after the close of the comment period for this rulemaking or any rulemaking relating to the Detroit area,

[1] *See* documentation on EPA's Environmental Justice Screening and Mapping Tool at *https://www.epa.gov/ejscreen.*

[2] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[3] EPA, ''EJSCREEN Technical Documentation,'' appendix H (September 2019).

GLELC and Sierra Club sent what they described as ''supplemental comments'' regarding the proposed redesignation. EPA is exercising its discretion to respond to these comments herein. Summaries of the adverse comments and EPA's responses are provided below.

Comment: Two students at the University of Michigan raised concerns with EPA's proposed approval of EGLE's redesignation request. One student shared their fear that redesignating the Detroit area could increase ground-level ozone and suggested that deregulation in the past has ''worsened our fight against climate change.'' The second student raised concerns about Detroit's air quality, given the existence of power plants and other facilities in the area. Given EPA's April 13, 2022, proposed determination that the Detroit area failed to attain the 2015 ozone NAAQS by its attainment date based on 2018–2020 data, this student believes it is inappropriate to reevaluate the area's legal designation at this time. This student suggested that ''legal status should only be considered when changes have been made and have been upheld over a substantial period of time.''

Response: These commenters raise issues that are similar to the concerns of Sierra Club and GLELC, which we discuss more extensively below.

A redesignation to attainment does not remove any emission control measures for existing sources that are already adopted into the EPA approved SIP for Michigan. As we discuss below and in the March 14, 2022, proposal, EGLE's redesignation request includes a demonstration that attainment of the 2015 ozone NAAQS was attributable to permanent and enforceable emissions reductions. Further, EGLE's January 3, 2022, submission includes a plan to maintain the NAAQS through 2035 in the Detroit area, as well as a contingency plan that would be triggered if the area were to violate the 2015 ozone NAAQS in the future. While EPA agrees that climate change is an important issue, this rulemaking addresses the separate issue of the Detroit area's designation for the 2015 ozone NAAQS.

Regarding concerns about the existence of power plants and other industrial facilities in the area, we refer the commenter to Table 2 in EPA's March 14, 2022, proposal, which shows significant emissions decreases in the Detroit area from 2014 to 2019. Specifically, NO_X and VOC emissions from point, nonpoint, on-road, and nonroad sources in the Detroit area declined by 203.21 tons per ozone season day and 104.33 tons per ozone season day, respectively, between 2014 and 2019. Decreases in NO_X and VOC emissions from point sources, which is the category including power plants, account for 69.85 TPSD and 18.50 TPSD, respectively, of the total decrease. These emissions decreases have contributed to the gradual reductions in ozone concentrations in the Detroit area. Further discussion of the commenter's suggestion that EPA should delay action on Michigan's redesignation request is found below.

A. Monitoring Data

Comment: Sierra Club and GLELC observe that the Detroit area attained the 2015 ozone NAAQS, but they raise concerns that the ''margin for NAAQS compliance is particularly thin'' at two monitors in the Detroit area. The commenters predict future values at which the NAAQS would be exceeded at four monitors in the area, and raise additional concerns that the area may violate the NAAQS during the 2022 ozone season. The commenters contend that, in order to approve a redesignation request, EPA must find that the improvement in air quality is ''permanent'' and the result of ''enforceable reductions to emissions,'' and that, in this case, neither of those conditions has been met.

Response: The 2015 ozone NAAQS is defined at 40 CFR 50.19, and appendix U to 40 CFR part 50 contains the data handling conventions and computations necessary for determining whether the NAAQS has been met at a monitoring site. To attain the 2015 ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. As described in appendix U, design values are reported in ppm to three decimal places, with additional digits to the right of the third decimal place truncated.

The commenters conflate two separate demonstrations that are required under the statutory criteria for redesignation. CAA section 107(d)(3)(E)(i) provides that EPA may not promulgate a redesignation to attainment unless the Administrator ''determines that the area has attained the national ambient air quality standard.'' In finding that an area has met the first criterion, the statute does not require EPA to assess how long that attainment has been occurring for or by what margin the area is attaining. Therefore, the margin by which an area (or monitor) attains the NAAQS is not relevant to the question of whether or not the area is attaining the NAAQS. Separately, CAA section 107(d)(3)(E)(iii) provides that the Administrator must also determine ''that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.'' As used in CAA section 107(d)(3)(E), the term ''permanent'' does not describe the improvement in air quality, as commenters suggest, but instead describes the emissions reductions to which attainment must be attributable.

Michigan's plan for maintaining the NAAQS is relevant under CAA section 107(d)(3)(E)(iv), which provides that the Administrator must fully approve ''a maintenance plan for the area as meeting the requirements of section 175A.'' The requirement for a maintenance plan includes the requirement for contingency provisions to be triggered should an area violate the NAAQS after redesignation, which illustrates that the CAA anticipates some possibility that areas may in the future violate the NAAQS despite meeting all requirements under CAA section 107(d)(3)(E). In this final rule EPA is approving EGLE's plan for maintaining the NAAQS through 2035, as described below and in the proposed rule.

B. Planning Requirements

Comment: Sierra Club and GLELC raise concerns that redesignation ''could jeopardize public health by unnecessarily delaying needed air quality planning requirements.'' The commenters note EPA's separate proposal to reclassify the Detroit area as Moderate, which would trigger new requirements for SIP submissions. The commenters allege that redesignation would ''prematurely halt ongoing planning efforts to reduce NO_X and VOCs'' and without a nonattainment designation the State will face ''no obligation to select or implement any of these control measures to assure ozone levels are maintained below the NAAQS.'' The commenters allege that although ''similar discussions and planning might resume upon redesignation to nonattainment, there could be several years of delay in the meantime while excess ozone levels endanger public health.'' The commenters reference requirements for Reasonably Available Control Technology (RACT), and the potential for reductions in NO_X emissions from the Monroe power plant, claiming that this facility emitted 15,219 tons of NO_X in 2014.

Response: In a separate rulemaking published April 13, 2022, EPA proposed to reclassify the Detroit area as Moderate, based on air quality data from 2018–2020 showing the Detroit area failed to attain the 2015 ozone NAAQS by its Marginal attainment date. EPA finalized the reclassification as Moderate on February 1, 2023, and established a deadline of March 1, 2023, for most SIP revisions associated with Moderate area requirements, including requirements for an attainment plan and RACT. However, upon the effective date of this redesignation to attainment, nonattainment requirements, including Moderate area requirements, will no longer apply to the Detroit area.

As described below, if the Detroit area violates the 2015 ozone NAAQS after this redesignation, then Michigan would be required to implement its contingency plan to bring the area back into attainment. The contingency provisions submitted by EGLE include adoption or expansion of NO_X RACT rules and/or VOC RACT rules for existing stationary sources. This is the construct of the CAA with regard to redesignated attainment areas to provide for protections associated with air quality in designated attainment areas. It should be noted that many sources that would be subject to VOC RACT under the 2015 ozone NAAQS have implemented VOC controls as required by the rules Michigan adopted to meet VOC RACT requirements under the 1979 ozone NAAQS. *See* 59 FR 46182, September 7, 1994.

To illustrate the example of a facility with high NO_X emissions which could be subject to additional control requirements, the commenters reference the Monroe power plant, and incorrectly claim this facility emitted 15,219 tons of NO_X in 2014. According to EPA's 2014 National Emissions Inventory (NEI), the Monroe power plant emitted 8,320 tons of NO_X in 2014.[4] A separate data source, EPA's Clean Air Markets Program Data (CAMPD), shows a similar result of 8,296 tons of NO_X in 2014.[5] However, as shown in the CAMPD database, more recent emissions data indicate reduced NO_X emissions and improved control efficiency at this facility. NO_X emissions from the Monroe facility declined by 45% between 2014 and 2021, even though heat input declined by only 5% over the same period.[6] Because heat input corresponds to power generation, these data show that the significant decrease in NO_X emissions was not due to significantly decreased operation of the facility. Rather, the decrease in NO_X emissions is attributable to increased efficacy of pollution control equipment that was installed and operated to reduce NO_X emissions. Specifically, Monroe power plant has Selective Catalytic Reduction (SCR) NO_X controls on all four units. The most recent installation of SCR was in November of 2014, and therefore would have been minimally represented in the 2014 emissions data. As discussed in more detail further below, these significant reductions in NO_X emissions from Electric Generating Units (EGUs) such as the Monroe facility can be attributed to permanent and enforceable measures such as the Cross-State Air Pollution Rule (CSAPR), which is a Federal rule that established emissions budgets designed to incentivize the installation and operation of emissions controls.

The commenters also raise concerns that implementation of Moderate area requirements could be delayed by a violation of the 2015 ozone NAAQS subsequent to redesignation. The commenters speculate that under this scenario EPA would redesignate the area to nonattainment in 2023 and set a new attainment date for three years later, which would be 2026. As discussed below, under the CAA, a violation of the NAAQS after redesignation to attainment does not trigger an automatic redesignation to nonattainment. Rather, as discussed above, the initial required action under such circumstances would be the State's implementation of the contingency provisions in a State's approved maintenance plan for the relevant NAAQS, and Michigan's maintenance plan here would require the State to implement the contingency provisions more quickly than the three-year timeline identified by the commenters. The redesignation of an area to nonattainment under section 107(d)(3) is discretionary, and could take significantly longer whether initiated at the request of the State or by EPA itself.

C. Environmental Justice Concerns

Comment: The commenters state that EPA must consider environmental justice in this action, as much of the nonattainment area contains already overburdened communities facing disproportionate environmental impacts. The commenters reference various rates of asthma incidence across demographic or geographic groups, including asthma rates in Detroit that are higher than rates in the rest of Michigan, and rates of asthma hospitalizations within both Wayne and Washtenaw counties that are higher for Black children relative to white children. The commenters also raise concerns that ''the asthma burden in Detroit appears to be worsening'' and reference statistics showing that asthma rates for adults in Detroit increased from 15.5% in 2016 to 16.2% in 2021. In support of their comments, the commenters reference a peer-reviewed study from 2009 associating ozone exposure with health effects on adults with asthma in Atlanta. Additionally, the commenters contend that EPA has not followed the portion of Executive Order 12898 that calls for ''meaningful involvement'' from impacted communities beyond the minimum requirements for a rulemaking. The commenters further contend that EPA ''must also consider Title VI of the Civil Rights Act in evaluating the disproportionate consequences of prematurely approving'' the redesignation request. Commenters cite 40 CFR 7.35(b) to state that EGLE cannot use ''criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin''. Commenters then state that ''[g]iven the links between ozone pollution and asthma as well as the racial disparities regarding asthma burdens in Michigan, there is significant risk of EPA's decision violating Title VI's prohibition'' against administering programs in a manner that has a discriminatory effect. Commenters end this portion of the comments by stating, ''It's unclear how, if at all, EGLE or EPA accounted for the Title VI requirements and ensured compliance in regards to this proposal.''

Response: EPA is committed to the meaningful involvement and fair treatment of vulnerable populations disproportionately affected by pollution. EPA does not agree with all of the commenters' characterizations in this letter. EPA has considered both environmental justice and title VI of the Civil Rights Act in the context of this action, and an overview of EPA's considerations of both are described below. Further, EPA has complied with public notice and comment requirements for this action.

With regard to EPA's consideration of environmental justice, EPA is aware of the demographic data for the Detroit nonattainment area that is the subject of this final action. EPA acknowledges that the Detroit area includes communities that are pollution-burdened and underserved. As described above, EPA considered this information as it

[4] *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

[5] *https://campd.epa.gov/.*

[6] In 2014, heat input was 157,824,072 Metric Million British Thermal Units (MMBtu) and NO_X emissions were 8,296 tons. In 2021, heat input was 149,865,102 MMBtu and NO_X emissions were 4,544 tons.

pertains to actions being taken in this action, and further discussion on this consideration is below in this response.

Consistent with regulatory obligations associated with this action, EPA held a public notice and comment period for this action. In addition, EPA conducted related outreach with Detroit community members, advocacy groups, and local government officials, regarding air quality issues that have been identified as priorities by these stakeholders. In a meeting EPA held with representatives from the City of Detroit, Michigan Environmental Council, GLELC, Southwest Detroit Environmental Vision, and the Ecology Center regarding a separate regulatory action, following a presentation by EPA and a roundtable discussion with these stakeholders, EPA solicited opinions from these stakeholders regarding topics for future meetings.[7] EPA suggested three topics: permitting, enforcement and inspections, and ground-level ozone, which we explained included our proposed redesignation. Of those stakeholders who shared an opinion, all voiced interest in topics other than ozone, and no stakeholders indicated an interest in future engagement on ozone. Through community engagement, EPA took steps to understand different levels of public interest for different rulemakings that were impacting the Detroit, MI area on more than one topic around the same time (which was in addition to public notice and comment requirements).

In addition to communicating directly with stakeholders, EPA went beyond the obligations of notice-and-comment rulemaking by issuing a press release on the day the proposed redesignation was published in the **Federal Register**.[8] The press release was picked up by The Detroit News, one of the area's two major newspapers.[9] In its article, The Detroit News noted that EPA would be accepting public comments on the proposed redesignation. Additionally, on April 4, 2022, EPA extended the comment period on the proposed redesignation by 14 days, in response to a request from Sierra Club for additional time to ''fully review the basis for EPA's proposal and confer with local partners'' given Sierra Club's suggestion that the proposed action was a ''consequential decision impacting environmental justice communities.''

With regard to the comments concerning the demographics of the community and asthma burdens in the area, EPA considered a variety of relevant factors in its determination to propose approval of the Detroit area redesignation and maintenance plan. Importantly, the comment letter indicates that EPA is now ''prematurely'' approving the request for redesignation. As is explained throughout this action, this action is not premature. Rather, it is consistent with the applicable requirements of the CAA for an area to qualify for a redesignation. This redesignation request recognizes that the area has achieved a national ambient air quality standard and alters the designation of the area; however, applicable emission reduction measures remain in effect, as do contingency provisions in the maintenance plan now being approved that will be triggered if the area fails to continue to attain the standards. Additional information is provided below in this response to comment.

Further, under section 109 of the CAA, EPA sets primary, or health-based, NAAQS for all criteria pollutants to provide requisite protection of public health, including the health of at-risk populations, with an adequate margin of safety. It establishes secondary, or welfare-based, standards to provide requisite protection of public welfare from any known or anticipated adverse effects of the criteria pollutant in ambient air. In EPA's October 26, 2015, rulemaking strengthening the ozone NAAQS to the level of 0.070 ppm, we provided a detailed rationale for the Administrator's determination that the 2015 ozone NAAQS would be protective of public health (80 FR 65292). This rationale included explicit consideration of protection for people, including children, with asthma.

EPA considered commenters' concerns regarding asthma rates and considered that information in light of the action being finalized. As we explained in the October 26, 2015, rulemaking, asthma is a multi-etiologic disease, and air pollutants, including ozone, represent only one potential factor that may trigger an asthma exacerbation.

Importantly, as is explained throughout this action, if, following redesignation, there are increases in ozone that result in a violation of the 2015 ozone standard, the contingency provisions of the maintenance plan would trigger additional actions by EGLE.

In support of their comments, the commenters reference a peer-reviewed study from 2009 associating ozone exposure with health effects on adults with asthma in Atlanta.

As we noted in a Technical Support Document in the docket folder for the June 4, 2018, rulemaking designating the Detroit area as nonattainment for the 2015 ozone standard, the 2014–2016 design value for the area was 0.073 ppm (83 FR 25776). As noted above, the 2019–2021 design value is 0.070 ppm. The commenters do not clarify how the ozone levels in the area might be a primary cause or primary contributor to the increase in asthma rates they cite as occurring over that same period (between 2016 and 2021).

As discussed above, the entire Detroit area is attaining the 2015 ozone NAAQS, which EPA established to provide requisite protection of public health, including the health of at-risk populations, with an adequate margin of safety.

EPA also reviewed current and upcoming emission reduction measures that are anticipated to further mitigate pollution issues in the Detroit area. Existing Federal mobile source and point source emission reduction programs will result in ongoing NO_X and VOC emissions reductions in the Detroit area. For example, NO_X cap and trade programs such as CSAPR continue to achieve emissions reductions that are protective of human health regardless of whether EPA redesignates downwind areas for any NAAQS. In addition, the Federal Good Neighbor Plan for the 2015 ozone NAAQS is projected to achieve emissions reductions that will provide health benefits to populations living in proximity to covered facilities beginning in the 2023 ozone season. Further, Michigan has submitted a maintenance plan that projects continuing reductions in NO_X and VOC emissions through 2035 from the point, nonpoint, on-road, and nonroad categories, based on outputs from EPA's MOVES3 and 2016v2 modeling platforms.

In addition, EPA is now approving the contingency provisions in Michigan's maintenance plan for the Detroit area. As noted elsewhere in this rulemaking if the Detroit area were to violate the 2015 ozone NAAQS after redesignation, then Michigan would be required to correct the violation by expeditiously implementing the contingency provisions in its maintenance plan. EPA reviewed the contingency provisions submitted by EGLE, and found that many of these actions would benefit

[7] *See* Appendix A to May 11, 2023, memorandum entitled ''Memorandum to the Docket: Technical Support Document for the Detroit Redesignation to Attainment for the 2015 Ozone National Ambient Air Quality Standard'' (hereafter referred to as May 11, 2023, TSD).

[8] *https://www.epa.gov/newsreleases/epa-and-michigan-propose-detroit-now-meets-federal-air-quality-standard-ozone.*

[9] *https://www.detroitnews.com/story/news/environment/2022/03/14/pollution-reduction-prompts-epa-improve-metro-detroits-air-quality-rating/7041856001.*

pollution-burdened and underserved communities that may be located near heavily industrial areas (*i.e.,* fuel and diesel retrofit programs, which may have significant impacts around truck corridors and rail yards).

Turning to the issues raised regarding title VI of the Civil Rights Act of 1964 (title VI), EPA does not agree with commenters' characterization of potential concerns raised under title VI. Title VI prohibits discrimination by recipients of EPA financial assistance on the basis of race, color, or national origin. Under EPA's nondiscrimination regulations, which implement title VI and other civil rights laws,[10] recipients of EPA financial assistance are prohibited from taking actions in their programs or activities that are intentionally discriminatory and/or have an unjustified disparate impact.[11] Because EPA is not a recipient of Federal financial assistance, title VI does not apply to EPA itself. EPA carries out its mandate to ensure that recipients of EPA financial assistance comply with their nondiscrimination obligations by investigating administrative complaints filed with EPA alleging discrimination prohibited by title VI and the other civil rights laws; [12] initiating affirmative compliance reviews; [13] and providing technical assistance to recipients to assist them in meeting their title VI obligations. Importantly, compliance with the CAA does not constitute compliance with title VI.

As part of this redesignation, EPA is approving the maintenance plan for the area, including contingency provisions, which will be incorporated into the SIP. Title VI does apply to EGLE as a recipient of Federal financial assistance.

In the context of SIP actions, EPA has evaluated issues similar to the title VI comments through CAA section 110(a)(2)(E)(i). *See, e.g.,* 77 FR 65294 (October 26, 2012); 87 FR 60494 (October 5, 2022). EPA has previously acknowledged that it has not issued national guidance or regulations concerning implementation of section 110(a)(2)(E) as it pertains to consideration of title VI and disparate impacts on the basis of race, color, or national origin in the context of the SIP program. 87 FR at 60530. Such guidance is forthcoming and will address CAA section 110(a)(2)(E)'s necessary assurance requirements as they relate to title VI.

In the context of a SIP action, however, section 110(a)(2)(E) requires that a State provide ''necessary assurances'' that the SIP submission at issue would not result in violations of any State or Federal law. Thus, as the commenters suggest, a relevant inquiry for EPA in this rulemaking is whether the air agency has provided adequate necessary assurances that implementation of the content of the SIP submission at issue is not prohibited by title VI (*i.e.,* implementation of the SIP would not result in an unjustified adverse disparate impact on the basis of race, color, or national origin). *See, e.g.,* CAA section 110(a)(2)(E)(i).

This redesignation action, at its core, recognizes that an area is meeting the NAAQS and has all the required CAA measures in place, including the required maintenance plan with contingency provisions. The contingency provisions of the maintenance plan would require additional control measures in the event that a future design value for the area exceeds the level of the ozone standard, or if the fourth-highest monitored value, averaged over two years, is 0.071 ppm or higher.[14] In this action, the plan being finalized includes required contingency provisions (as was described above) as well as additional ozone related measures already approved into the SIP due to prior ozone standards (also described earlier in this action).

For all these reasons, there is no information to support a conclusion that EGLE's implementation of this SIP submittal, including the maintenance plan now being approved (including contingency provisions), would result in an unjustified disparate impact or is otherwise prohibited by title VI of the Civil Rights Act. Thus, EPA is not requiring any further necessary assurances at this time for purposes of compliance with section 110(a)(2)(E)(i).

D. Trend in Design Values

Comment: The commenters contend that EPA does not have sufficient data to determine that the 2021 emission reductions were part of a downward trend, as the fourth highest recorded concentration increased at all monitor locations except St. Clair County between the years of 2019 and 2020. As the 2018–2020 design values show nonattainment at half of the monitor locations in the area, the commenters contend that there is no reason to believe that the 2019–2021 design values will be representative of future ozone concentrations.

Response: Attainment of the 2015 ozone NAAQS, like the 1997 ozone NAAQS and 2008 ozone NAAQS before it, is measured by averaging the annual fourth-highest daily maximum 8-hour average concentrations over a 3-year period. In our rulemaking promulgating the 1997 ozone NAAQS, EPA noted the ''lack of year-to-year stability'' inherent to the prior 1979 ozone NAAQS, and determined that a form including a 3-year average would ''provide some insulation from the impacts of extreme meteorological events that are conducive to ozone formation.'' (62 FR 38856, July 18, 1997). Similarly, when EPA revised the NAAQS in 2008, we recognized ''that it is important to have a form that is stable and insulated from the impacts of extreme meteorological events that are conducive to ozone formation. Such instability can have the effect of reducing public health protection, because frequent shifting in and out of attainment due of meteorological conditions can disrupt an area's ongoing implementation plans and associated control programs. Providing more stability is one of the reasons that EPA moved to a concentration-based form in 1997.'' (73 FR 16435, March 27, 2008). In our October 26, 2015, rulemaking which retained the form of the 1997 ozone NAAQS and 2008 ozone NAAQS but strengthened the NAAQS to the level of 0.070 ppm, EPA found that the three-year average ''provides an appropriate balance between public health protection and a stable target for implementing programs to improve air quality.'' We therefore observe that as a general matter, EPA designed the form of the 2015 ozone NAAQS to accommodate some year-to-year variation in ozone concentrations. The

[10] 40 CFR part 7 and part 5.

[11] 40 CFR 7.30 and 7.35.

[12] 40 CFR 7.120.

[13] 40 CFR 7.115.

[14] The list of potential contingency provisions is provided in EGLE's submittal dated January 3, 2022. They include: Adoption of or updating of VOC or NO_X Reasonable Available Control Technology (RACT) rules for existing sources covered by USEPA Control Technique Guidelines, Alternative Control Guidelines, or other appropriate guidance issued after the 1990 CAA, such as VOC RACT for increased methane leak monitoring and repair at oil and gas compressor stations, automobile and light-duty truck assembly coatings, miscellaneous metal and plastic parts coatings, paper, film, and foil coatings, miscellaneous industrial adhesives, or industrial cleaning solvents, or NO_X RACT for stationary internal combustion sources, utility boilers, process heaters, iron and steel mills, or glass manufacturing; Applying VOC RACT on existing smaller sources; Implementing alternative fuel and diesel retrofit programs for fleet vehicle Operations; Requiring VOC or NO_X control on new minor sources (less than 100 tons per year); Increasing the VOC or NO_X emission offsets for new and modified major sources; Reducing idling programs; Trip reduction programs; Traffic flow and transit improvements; Working with the Michigan Department of Licensing and Regulatory Affairs to encourage natural gas utilities to increase turnover of legacy distribution pipelines; Stationary engine controls to reduce formaldehyde and NO_X Emissions; Phase 2 AIM rules; Phase 5 Consumer Products rules; and additional measures as identified by EGLE.

design value is intended to be the simple average of the annual fourth-highest daily maximum 8-hour average concentrations over the 3-year period, with no special consideration given to any of those three years. When we structured the form of the 2015 ozone NAAQS, EPA created no requirement that for a monitor or an area to attain the standard, a downward trend must be observed within the 3-year period.

Over a longer period, however, EPA has observed a clear downward trend in ozone design values in the Detroit area. In evaluating the commenters' claims regarding trends in ozone concentrations, EPA reviewed past data from all monitors in the Detroit area. These data cover the period ending with the most recent design value period, which is 2020–2022, and starting with the design value period that was the basis of our nonattainment designation for the 1997 ozone NAAQS, which was 2001–2003 (69 FR 56697, September 22, 2004). The historic ozone design values for the seven-county Detroit area are summarized in Table 3. For each 3-year period, the design value is determined by the monitor or monitors with the highest 3-year averaged concentration. For all 3-year periods, the highest design value was observed at one or more of the following five monitors: Port Huron, East 7 Mile, New Haven, Allen Park, or Warren.

TABLE 3—3-YEAR AVERAGE OF THE FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS (OZONE DESIGN VALUES) FOR THE DETROIT AREA

3-Year period	Average fourth-highest daily maximum 8-hour ozone concentration (ppm)
2001–2003	0.097
2002–2004	0.092
2003–2005	0.090
2004–2006	0.082
2005–2007	0.086
2006–2008	0.082
2007–2009	0.080
2008–2010	0.075
2009–2011	0.078
2010–2012	0.081
2011–2013	0.077
2012–2014	0.074
2013–2015	0.072
2014–2016	0.073
2015–2017	0.073
2016–2018	0.074
2017–2019	0.072
2018–2020	0.071
2019–2021	0.070
2020–2022	0.070

As shown in Table 3, ozone design values in the Detroit area have declined significantly from 0.097 ppm in 2001–2003 to 0.070 ppm in 2019–2021, and 2020–2022. On this point, we agree with the commenters' statement that ''there is no doubt that, in general, ozone precursor emissions have decreased over the past two decades as noted by the studies and that, as a result, ozone concentrations have decreased.'' This decrease is clear across the overall time period presented in Table 3.

However, as also shown in Table 3, EPA has sometimes observed an increase in ozone design values, such as the increase from 0.073 ppm in 2015–2017 to 0.074 ppm in 2016–2018. In EPA's view, fluctuation in design values over a shorter period does not detract from the overall trend in air quality improvements over a longer period. On three occasions, at the 2004–2006, 2008–2010, and 2013–2015 3-year periods, the design value reached a new low, before experiencing an increase in the subsequent 3-year period. However, after each of these occasions, the design value returned to its low point within several years and did not exceed that low point for a second time. This is consistent with national decreasing trends in ozone concentrations which face some year-to-year variability in measured concentrations.[15] Interannual variability is expected even when there are longer-term downward trends driven by emissions reductions (Strode et al., 2015;[16] Simon et al., 2015[17]). This suggests that, despite variability within a 3-year period and occasionally across several 3-year periods, historic permanent and enforceable emissions reductions have been effective in reducing ozone concentrations in the area, and these reduced ozone concentrations have become more durable as the associated control programs have progressed through implementation. As we discuss below, if a future design value in the Detroit area exceeds the level of the 2015 ozone NAAQS, then implementation of Michigan's contingency provisions, combined with the ongoing implementation of State and Federal control measures documented in EGLE's maintenance plan, would be the appropriate remedy.

E. Timeline

Comment: The commenters suggest that EPA should wait until the end of the 2022 ozone season to act upon the redesignation request.

Response: EPA is finalizing this action after considering the additional year of monitoring data from 2022. In our separate rulemaking finalizing a

[15] *https://www.epa.gov/air-trends/trends-ozone-adjusted-weather-conditions.*

[16] Strode, S.A., Rodriguez, J.M., Logan, J.A., Cooper, O.R., Witte, J.C., Lamsal, L.N., Damon, M., Van Aartsen, B., Steenrod, S.D., and Strahan, S.E.: Trends and variability in surface ozone over the United States, J. Geophys. Res.-Atmos., 120, 9020–9042, *https://doi.org/10.1002/2014JD022784, 2015.*

[17] Heather Simon, Adam Reff, Benjamin Wells, Jia Xing, and Neil Frank, Ozone Trends Across the United States over a Period of Decreasing NO_X and VOC Emissions, Environmental Science & Technology, 2015 49(1), 186–195.

clean data determination for the Detroit area, EPA has found that the area continued to attain the standard for the 2020–2022 period, which is one year beyond the 2019–2021 period which is the basis of the State's redesignation request.

F. Meteorology

Comment: The commenters stated that EPA did not fully consider unusually favorable meteorological conditions as the cause for decreased ozone concentrations, since EPA relies on temperature studies done by EGLE and the Lake Michigan Air Directors Consortium (LADCO) that consider long-term ozone concentrations rather than concentrations during the design value years. Additionally, the commenters contend that although temperature is a large factor in the creation of ozone, there are other factors that should be considered. While factors besides temperature were considered for the LADCO study, they were only considered through 2019 and did not include 2020 or 2021, and the commenters stated that the higher 2021 humidity levels could have contributed to decreased ozone concentrations. Lastly, the commenters also claim that EPA did not account for ''how lower than average temperatures and fewer days above 80 degrees Fahrenheit have impacted ozone concentrations'' and that ''2019 appears to have been a year with exceptionally few high temperature days. In that year, there were only 76 days with a maximum temperature equal to or above 80 degrees Fahrenheit, which is the lowest total since 2009.'' Broadly, the commenters question if EGLE and EPA have appropriately considered whether temperature and other meteorological conditions, as opposed to emissions reductions, were the cause of lower ozone concentrations.

Response: The analyses of long-term meteorological trends including both Michigan's meteorological analysis and LADCO's classification and regression tree (CART) analysis helps to illustrate the cause for decreasing ozone concentrations over time in the Detroit area. Additionally, EPA's Trends in Ozone Adjusted for Weather Conditions show that while the Detroit area benefited from unconducive meteorology in 2019, the weather adjusted ozone trends show that meteorological conditions were more conducive than average in 2020. Thus, the area did not experience three consecutive years of unconducive meteorology in 2019–2021, therefore the meteorology for the 3-year period as a whole was not ''unusual''.[18]

Michigan's January 3, 2022, submittal presents LADCO's CART analysis for years 2005 through 2019, which evaluates 21 separate meteorological factors that can influence ozone formation in Detroit. This analysis ranks each variable by its relative importance. The most important factor in ozone formation in Detroit is Average PM Temperature, which is assigned a relative importance level of 1.000. Closely following Average PM Temperature are Max Daily Temperature, Max Apparent Temperature, and Average AM Temperature which are all assigned relatively high variable importance to ozone formation. The last of these four, Average AM Temperature, has a relative importance level of 0.9273. After this variable, there is a steep drop-off before arriving at the importance of the fifth variable, which is Average Wind South Vector with a relative importance level of 0.5763. In other words, the top four variables all relate to temperature, and these temperature variables are much more important than any other variable. As shown in LADCO's CART analysis for 2005 through 2019, temperature is the peak driving meteorological factor determining ozone formation in the Detroit area. Additionally, EPA's weather adjusted ozone trends, which go through 2021, also have daily max temperature as the most important variable at every site in the Detroit area. The next five are PM wind direction, AM wind speed, mid-day relative humidity and 24-hour transport direction, in varying orders of importance for individual ozone sites.

In evaluating the commenters' concerns that LADCO's CART analysis included data only through 2019, EPA reviewed a CART analysis which LADCO prepared more recently, and which analyzes data for 2005 through 2020. Inclusion of the more recent year does not support commenters' broader claims regarding meteorological impacts during the design value period. Rather, inclusion of the more recent year only reinforces the finding that variables relating to temperature are more important than any other meteorological variable in determining ozone formation in the Detroit area. In the newer analysis, LADCO evaluated a new variable, Average Apparent Temperature, which is grouped with the other four variables relating to temperature as the most important variables affecting ozone formation in Detroit, ahead of the variable for Average Wind South Vector and other less-important variables relating to factors such as precipitation and humidity.

Michigan's analysis for the years 2000–2021 considered temperature during the ozone season and its relationship with ozone concentrations. The State found that ozone concentrations declined over this period, even though temperatures increased over the same period. It is important to keep in mind that high ozone cannot form in the absence of precursor emissions. Michigan's finding is consistent with LADCO's CART analysis for the 2005–2019 period in the Detroit area, which shows that when the influence of meteorological variability is largely removed, ozone concentrations declined regardless, indicating that the downward trend in ozone levels is attributable to reductions in precursor emissions.

However, the commenters raise the concern that the State did not consider a wider breadth of meteorological factors besides temperature in 2020 and 2021. The commenters suggest that there may have been unanalyzed unusual meteorological conditions that might have affected ozone concentrations. The commenters state that there may have been higher levels of humidity in Detroit during the ozone season which may have depressed ozone formation in the area. To support this claim, the commenters present a graph of Hourly Humidity Comfort Levels Categorized by Dew Point for summers 2020 and 2021 in Detroit.[19] However, a presentation of dew point data does not illustrate anything useful about humidity levels, because dew point values are a function not only of humidity data but also of temperature data. In other words, a high dew point value may be caused by high temperatures, even if relative humidity is held constant. The commenters also fail to provide an analysis of humidity levels for previous years to back up their claim that humidity levels in 2020 and 2021 were unusual relative to historical levels. Regardless, meteorologically adjusted trends always show negative relationships between both relative humidity (RH) and ozone and dewpoint and ozone (meaning higher RH and dewpoint are associated with lower ozone), while temperature and ozone always have a positive relationship (higher temperature is associated with

[18] *https://www.epa.gov/air-trends/trends-ozone-adjusted-weather-conditions.*

[19] In the narrative section of their comment letter, the commenters include the incorrect chart for summer 2021. However, in a footnote, the commenters include a URL to the correct chart.

higher ozone). As explained above, other meteorological factors had a greater influence on Detroit ozone as evidenced by Michigan's, LADCO's and EPA's analyses.

EPA does not agree that we failed to provide significant evidence that the improvement in air quality is not attributed to unusual meteorological circumstances. EPA relied on Michigan's analysis and the LADCO CART analysis to conclude that air quality improvement has been a constant trend when meteorology is controlled for variance. The commenters have not presented any compelling evidence that the 2019–2021 design value period had unusual meteorology. Additionally, EPA's Trends in Ozone Adjusted for Weather Conditions corroborates these analyses.

As exhibited in LADCO's CART analysis, Detroit has seen decreasing ozone concentrations even when controlling for meteorological variance between 2005–2019. As presented in Michigan's analysis, ozone concentrations have been decreasing between 2000–2021 despite increasing temperatures in Detroit. This helps us conclude that the long-term trend of decreasing ozone concentrations can be attributed to decreases in ozone precursors and not because of meteorological factors. Additionally, EPA's Trends in Ozone Adjusted for Weather Conditions corroborates these analyses. EPA agrees with Michigan's conclusion that the air quality improvement in the Detroit area was caused by reductions in ozone precursors and not unusually favorable meteorological conditions.

G. Economic Conditions

Comment: The commenters contend that EPA's determination that improved air quality during 2019–2021 was caused by permanent and enforceable emissions reductions program has no basis because EPA did not fully evaluate whether decreased economic activity from the COVID–19 pandemic caused improved air quality in the Detroit area. The commenters suggest that effects of the COVID–19 pandemic on power plant emissions and automobile travel may be the likely cause of the reductions rather than the cited enforceable reduction measures. Specifically, the commenters raise concerns that reductions in vehicle miles traveled and emissions of ozone precursor emissions occurring in 2020 and 2021 were likely caused by the COVID–19 pandemic. The commenters conclude that EPA failed to consider an important aspect of the problem in not fully considering the impact of the pandemic in EPA's proposed rulemaking to redesignate the Detroit area to attainment of the 2015 ozone NAAQS.

Response: EPA recognizes the difficulties in assessing the impacts of the COVID–19 pandemic on ozone precursor emissions and ozone design values and the economic disparities from the COVID–19 pandemic, but we do not agree that the Detroit area's attainment is due to a temporary economic downturn associated with the COVID–19 pandemic. As discussed in the March 14, 2022, proposed rulemaking, we think that EGLE's submission and the rationale provided in EPA's proposal establishes that the area's attainment is due to the cited permanent and enforceable reductions and not temporary adverse economic conditions.

In their January 3, 2022, submittal, EGLE evaluated whether the improvement in air quality was caused by temporary adverse economic conditions, especially the economic conditions associated with the COVID–19 pandemic which first impacted Michigan in 2020. EGLE charted point source VOC and NO_X emissions in the Detroit area from 2012 to 2020. These two charts show the overall downward trend in point source emissions from 2012 to 2020. EGLE also evaluated both employment levels and VMT. While employment levels in the Detroit area were affected by COVID–19 and saw a 27 percent decrease in employment from March 2020 to April 2020, employment returned to 85 percent of March 2020 levels by June 2020, according to Bureau of Labor and Statistics (BLS) Quarterly Census of Employment and Wages.[20] Employment levels continued to increase through 2022, and as of March 2021 and March 2022, employment levels in the Detroit area were 93 and 99 percent of the employment in February 2020, before the onset of the COVID–19 pandemic, respectively. As noted by EGLE in their submission, the analysis performed by the Southeast Michigan Council of Governments (SEMCOG) indicated a reduction of less than 5 percent of VMT in 2020 based on their travel demand forecasting model.

Nevertheless, in response to this comment, EPA has performed additional analyses that further support our determination.

The commenters highlight nationally decreased power plant emissions during the COVID–19 pandemic recession beginning in 2020 and cite point source reductions that occurred from 2019 to 2020. EPA therefore analyzed total heat input from EGUs across the State of Michigan from 2018 to 2022 to investigate whether Detroit's attainment of the NAAQS during the 2020 ozone season could be attributable to economic effects from the COVID–19 pandemic.[21] Of the five years of data examined, our analysis found that April 2020 had the single lowest total monthly heat input for EGUs located in the seven Southeast Michigan counties in the Detroit area. This monthly value is correlated with the strongest economic effects that could be attributable to lockdown orders, declining employment figures, or decreases in vehicle miles traveled, as discussed later in this section. However, we note that the total monthly heat input at these power plants began rebounding in May 2020 and increased to an annual peak in July 2020. This pattern of monthly total heat inputs increasing from April onwards and peaking in July or August is consistent with annual trends over the five-year period for both EGUs in the seven-county Detroit area and across the State as a whole. The ozone monitoring season runs from March 1 to September 30 in Michigan, but the meteorology most conductive to conditions that could result in exceedances of the NAAQS typically occurs in summer months of May through July. EPA's analysis shows that while there was a pronounced effect on electricity production at EGU facilities in the Detroit area in April 2020, emissions activity from these sources increased in subsequent months following the same monthly patterns that were observed in 2018 and 2019. Moreover, we note similar annual patterns of EGU activity peaking in July or August continued again in 2021 and 2022. Therefore, EPA does not agree that economic effects of the COVID–19 pandemic on power plant emissions are responsible for the Detroit area's attainment of the NAAQS in 2020 or any year thereafter rather than the permanent and enforceable emissions reductions described in the notice of proposed redesignation.

In response to the commenters concerns that 2021 emissions were still impacted by the pandemic, EPA additionally examined emissions from EGUs in Michigan subject to the Cross-State Air Pollution Rule NO_X Annual Program, and found that there were similar annual NO_X emissions in 2021 relative to 2019, 31,743 tons per year (tpy) versus 31,123 tpy, respectively.[22]

[20] *See www.bls.gov/cew.*

[21] *See* Appendix B to May 11, 2023, TSD.

[22] *See* Appendix C to May 11, 2023, TSD.

EPA further evaluated coal consumption for electric power, which the commenters note was still lower in 2021 as compared to 2019 likely due to the pandemic. Calculations show that 2021 consumption was 97 percent of the level of coal consumption in 2019 in Michigan.[23] In May 2021, one of the largest coal-fired EGU facilities in the area, DTE River Rouge, permanently retired. The shutdown of this facility was estimated by EGLE to achieve annual reductions of 2,716 tons of NO_X.

EPA also analyzed the pandemic's impact on traffic in response to the commenters' assertion that automobile travel ''plunged'' in 2020 as a result of the pandemic, using data from StreetLight,[24] which is an on-demand mobility analytics platform that uses data from mobile devices. We found that traffic did decrease during the pandemic, but largely returned to pre-pandemic levels by the time of year that meteorological conditions are most conducive to ozone formation. As shown in the StreetLight data, the seven-county Detroit area experienced a drop in VMT during the period of the stay-at-home order, beginning March 23 and ending June 1. However, beginning in June 2020, VMT was comparable to VMT levels before the start of the pandemic.[25] This is significant because EPA has found that in the upper Midwest, the majority of ozone exceedances occur in late May though late July.[26] In addition, border crossing information, provided by SEMCOG, shows that heavy duty truck VMT remained near pre-pandemic levels in 2020. Given the many mobile source reduction measures in place in Michigan, EPA does not conclude that the reductions achieved are based on a brief period of decreased VMT in 2020 due to the COVID–19 pandemic.

Another important aspect of the economic changes that occurred during the COVID–19 pandemic in the Detroit area, which the commenters do not address, is that manufacturing processes in the Detroit area did not stop during the pandemic, but rather shifted towards new processes related to the pandemic. For example, the Oakland County Board of Commissioners appropriated over 300,000 dollars to six facilities to begin production on personal protection equipment (PPE) such as face masks and ventilator equipment.[27] Ford Motor Company and General Motors Corporation (GM) worked to reallocate their production to ventilators, which began training by April 2020. GM also began producing face masks by March 27, 2020 and worked with a local automation company to create an assembly line capable of producing 50,000 masks a day.[28] Several nonprofit groups worked to assist manufacturing facilities in shifting to production of surgical masks and gowns, such as the Industrial Sewing and Innovation Center (ISAIC), working with the City of Detroit, Michigan Economic Development Corporation, and others to establish efficient and automated production methods, noting that this effort was ''a way to keep people employed, and at the same time protecting people that are working on the front lines.'' [29] Carhartt worked with ISAIC, and offered one floor of their Detroit store to the nonprofit for factory space for this initiative, which received funding to produce 1 million surgical masks per month. These efforts speak to the rebounding of Detroit's employment rates post pandemic and highlight nonprofit work that drove much of the initiative to shift production. While the commenters highlight the highest single quarterly drop in Gross Domestic Product (GDP) of 31.4 percent in the second quarter of 2020, it is important to note the highest single quarterly increase in GDP in the third quarter of 2020, of 33.1 percent,[30] noted in the same report by the Congressional Research Service. Efforts such as those seen in Detroit have likely aided this rebound.

EPA does not agree that the Detroit area's attainment is due to a temporary economic downturn associated with the COVID–19 pandemic, but rather believes the Federally enforceable emission reduction measures were the main driving factor in the area coming into attainment.

H. Federal Control Programs

Comment: The commenters contend that EPA did not demonstrate that the Federal good neighbor rules and mobile source standards were key elements of the ozone reductions. The commenters assert that most of these rules were implemented and would have had emissions impacts prior to 2019, and even prior to 2018, and yet ozone concentrations increased in 2020 and most of the monitors in the area continued to be in nonattainment based on design values for the years 2018–2020. The commenters conclude that these facts undermine EPA's finding that the reduced ambient concentrations in 2019–2021 are in fact attributable to regulations that went into effect from 2004–2017. Additionally, the commenters contend that EPA relied on overall pollution reductions from the CSAPR Update, which covers areas that are downwind of the Detroit area. The commenters point out that EPA did not determine whether reductions in emissions specifically causing nonattainment in Southeast Michigan will occur, and that, because the CSAPR Update is a cap-and-trade program, facilities contributing to Detroit's ozone problem could comply with the rule by purchasing allowances, rather than reducing emissions. The commenters claim that ''reliance on these rules is illogical, incomplete, and fails to satisfy the requirements for redesignation.''

Response: Regarding EPA's mobile source standards, the commenters have incorrectly interpreted the timeline by which emissions reductions are achieved. The full benefit of these programs does not occur in the first year that a rule is effective, or even within the years that manufacturers must first begin manufacturing vehicles or engines in accordance with EPA's rules. These mobile source measures have resulted in, and continue to result in, large reductions in NO_X emissions over time due to fleet turnover (*i.e.,* the replacement of older vehicles that predate the standards with newer vehicles that meet the standards). Emissions reductions from these programs are modeled by EPA's 2016v2 platform and the MOVES3 mobile source emission modeling system, which we discuss below in greater detail. In our March 14, 2022, proposed rulemaking, in our discussions of Tier 3 motor vehicle emission standards as well as rules for heavy-duty diesel engines, nonroad diesel engines, large

[23] *See* Energy Information Administration, Coal Data Browser (Data Set: Total Consumption, Electric Power), *https://www.eia.gov/coal/data/browser/.*

[24] *See https://www.streetlightdata.com/.* EPA would not rely on StreetLight for the purpose of generating inventories, such as the inventories submitted by EGLE. However, this data source has a reasonable accuracy that is sufficient for the purpose of assessing claims made by the commenters regarding temporal changes in VMT during the COVID–19 pandemic. EPA believes this source of data is usable for this analysis in part because StreetLight data has very good performance when compared against traditional manual traffic counts, with an R^2 value of 0.9782. StreetLight has been utilized by many departments of transportation at the State and Federal level. *See https://www.streetlightdata.com/transportation-planning-case-studies/.*

[25] *See* Appendix D to May 11, 2023, TSD.

[26] *See* Appendix E to May 11, 2023, TSD.

[27] *See https://www.clickondetroit.com/news/local/2020/05/04/oakland-county-funds-manufacturers-to-switch-production-to-medical-equipment-protective-gear.*

[28] *See https://www.assemblymag.com/articles/95741-manufacturers-shift-to-ppe-production-to-fight-covid-19-pandemic.*

[29] *See https://www.modeldmedia.com/features/detroit-apparel-manufacturers-coalition.aspx.*

[30] *See* Congressional Research Service, Covid-19 and the U.S. Economy, *https://crsreports.congress.gov/product/pdf/R/R46606.*

spark-ignition engines, and marine diesel engines, we noted that some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles or engines are replaced with newer, compliant model years. It is incorrect that, by pointing out that the Detroit area did not attain the standard immediately upon promulgation or implementation of these rules, the commenters have demonstrated that it is ''illogical'' or ''incomplete'' for EPA to rely on these rules as permanent and enforceable emissions reductions as required by CAA section 107(d)(3)(E).

We also disagree that it was ''illogical,'' ''incomplete,'' or otherwise inappropriate for EPA to point to emissions reductions resulting from the Revised CSAPR Update as contributing to the Detroit area's attainment. First, we note that EPA did not only cite the Revised CSAPR Update; we also pointed to the historical and/or ongoing Federal programs such as the Clean Air Interstate Rule (CAIR), CSAPR, CSAPR Update, and Revised CSAPR Update, all of which addressed the interstate transport requirements of CAA section 110(a)(2)(D) and reduced ozone precursor emissions in the eastern United States over the relevant time period.

First, we note that multiple Federal Circuit Courts of Appeal have reviewed similar arguments challenging whether it is reasonable for EPA to rely upon regional interstate transport cap-and-trade programs as part of the cause of an area's attainment, and those courts have upheld EPA's reliance. *See Sierra Club* v. *EPA,* 774 F.3d 383 (7th Cir. 2014); *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015). Arguments raised in those cases were remarkably similar to commenters' contentions here: ''Sierra Club criticizes EPA's reliance on the NO_X SIP Call, because that program is aimed at reducing pollution in the region as a whole and permits the twenty-two affected states to purchase pollution 'allowances' from one another. Accordingly, Sierra Club believes that the effects on any one area in particular are not necessarily permanent and enforceable.'' *Sierra Club* v. *EPA,* 774 F.3d at 397. The Seventh Circuit noted that the overall structure of the trading program ensured a regional reduction in emissions, and that ''it is reasonable to rely on the program as one basis, among many, for concluding that reduced emissions levels will persist.'' *Id.* at 399. The Sixth Circuit similarly upheld challenges to EPA's reliance on interstate transport trading programs in a redesignation as one of the causes of an area's attainment. *Sierra Club* v. *EPA,* 793 F.3d at 665–68.

While commenters are correct that sources may comply with the Revised CSAPR Update by purchasing allowances rather than reducing emissions, the Revised CSAPR Update trading region (which includes Michigan and is currently comprised of 12 states in the eastern United States) is subject to an overall reduction in emissions via the State-level emissions budgets and assurance levels in that program. Commenters are not correct that EPA did not analyze whether reductions are and were required from states upwind of Michigan in the Revised CSAPR Update. While the Detroit area was not identified as having receptors in that rule, emission reductions required of Michigan and other states included in the Revised CSAPR Update will still result in air quality benefits in the Detroit area, due to the regional nature of ozone and ozone precursor transport.

Further, the control of ozone season NO_X emissions under the Good Neighbor Provision of the CAA will be continued and improved through the more recent final Good Neighbor Plan for the 2015 ozone NAAQS, which was signed on March 15, 2023.[31] This rule, as promulgated, is set to control ozone season NO_X emissions from power plants through a revised trading program beginning in 2023 and through emissions limits on certain other industrial sources beginning in 2026. The initial control stringency for power plants is based on the level of reductions achievable through immediately available measures, including consistently operating already-installed emissions controls. Power plant emissions budgets then decline over time based on the level of reductions achievable through phased installation of state-of-the-art emissions controls starting in 2024. The Good Neighbor Plan covers sources in Michigan, Ohio, Indiana, and Illinois, among other states. The final rule includes additional features to the trading program for power plants that promote consistent operation of emissions controls to enhance public health and environmental protection for the affected downwind regions and will also benefit local communities, including:

- A backstop daily emissions rate in the form of a 3-for-1 allowance surrender for emissions from large coal-fired units that exceed a protective daily NO_X emissions rate. This backstop would take effect in 2024 for units with existing controls and one year after installation for units installing new controls, but no later than 2030;
- Annually recalibrating the size of the emissions allowance bank to maintain strong long-term incentives to reduce NO_X pollution;
- Annually updating emissions budgets starting in 2030 to account for changes in power generation, including new retirements, new units, and changing operation. Updating budgets may start as early as 2026 if the updated budget amount is higher than the State emissions budgets established by the final rule for 2026–2029.

The commenters' concerns about prior NO_X cap and trade programs are misplaced, and these programs, up through the Revised CSAPR Update, can be counted on to deliver ozone air quality benefits. We continue to find it reasonable to rely on emissions reductions from these programs as one of the measures contributing to the attainment of this area. The more recent Good Neighbor Plan for the 2015 ozone NAAQS signed in March 2023 builds on these programs and will deliver continued assurance that permanent and enforceable emissions reductions providing air quality benefits to Detroit (among many other areas) will continue to be realized.

I. Maintenance Plan Contingency Provisions

Comment: The commenters contend that the contingency measure triggers in Michigan's maintenance plan are insufficient. The commenters conclude that the warning level response trigger of a 1-year 4th high daily maximum 8-hour average of 74 parts per billion (ppb) and the action level response trigger of a 4th high daily maximum 8-hour average monitoring value averaged over two years of 71 ppb or more are too lenient, and essentially meaningless given the current margin of attainment in the area. The commenters note that when considering current monitoring data, even a single monitoring value of 71 ppb in 2022 would result in a violation of the NAAQS and trigger a nonattainment designation.

Response: EPA disagrees with the commenters' contention that the contingency measure triggers are inadequate. Under the CAA, a violation of the NAAQS subsequent to redesignation to attainment does not trigger an automatic redesignation to nonattainment. As demonstrated by the contingency provisions requirement in section 175A(d), the CAA clearly anticipates and provides for situations where an area might monitor a violation

[31] *See https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs.*

of the NAAQS after having been redesignated to attainment. Section 175A(d) of the CAA states that in the event of a NAAQS violation after an area is redesignated to attainment a State is required to implement additional contingency provisions. Under this section of the CAA, states are not obligated to implement additional emission controls if an area is ''threatened'' with a future ozone standard violation. However, EPA does encourage the states to take preventative measures to prevent future ozone standard violations if at all possible, but does not definitively require the states to implement the identified contingency provisions unless a violation of the standard has actually occurred. *See* September 4, 1992, memorandum from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memorandum) at 12. Michigan's commitment to respond to triggers of a 1-year 4th high daily maximum 8-hour average of 74 parts per billion (ppb) and a 4th high daily maximum 8-hour average monitoring value averaged over two years of 71 ppb or more in addition to responding to a violation of the 2015 ozone NAAQS goes beyond the minimum requirements of section 175A(d).

Comment: The commenters contend that the maintenance plan allows Michigan too much discretion in selecting and implementing contingency provisions, stating that the language does not commit Michigan to implementing any control measures and lacks specificity as to which measures should be implemented in response to different levels of increasing ozone pollution. The commenters further argue that the 18-month timeline allowed from the triggering event to implementation of a contingency measure is too long, stating that a nonattainment designation for the area would be finalized by the time a contingency measure is implemented.

Response: The commenters overlook the provisions of the CAA applicable to contingency provisions. Section 175A(d) provides that ''[e]ach plan revision submitted under this section shall contain such contingency provisions as the *Administrator deems necessary* to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.'' (emphasis added). Thus, Congress gave EPA discretion to evaluate and determine the contingency provisions EPA ''deems necessary'' to assure that the State will promptly correct any subsequent violation. EPA has long exercised this discretion in its rulemakings on section 175A contingency provisions in redesignation maintenance plans, allowing as contingency provisions commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation within 18 months of a violation complies with the requirements of section 175A. *See* past redesignations, *e.g.,* Columbus, OH 2015 ozone standard (84 FR 43508, August 21, 2019), Shoreline Sheboygan County, WI 2008 ozone standard (85 FR 41405, July 10, 2020), Columbus, OH, 2008 ozone standard (81 FR 93631, December 21, 2016), Cincinnati, OH-IN, 2008 ozone standard (81 FR 91035, December 16, 2016, and 82 FR 16940, April 7, 2017), Cleveland, OH 2008 ozone standard (82 FR 1603, January 6, 2017), St. Louis, MO-IL 2008 ozone standard (83 FR 8756, March 1, 2018), Chicago-Gary-Lake County, IL-IN 1997 ozone standard (75 FR 26113, May 11, 2010, and 77 FR 48062, August 13, 2012), Milwaukee-Racine, WI 1997 ozone standard (77 FR 45252, July 31, 2012), and Detroit-Ann Arbor, MI 1997 ozone standard (74 FR 30950, June 29, 2009).

Section 175A does not establish any specific deadlines for implementation of contingency provisions after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must ''take effect . . . without further action by the State or [EPA].'' By contrast, section 175A confers upon EPA the discretion to determine what constitutes adequate assurance, and thus permits EPA to take into account the need of a State to assess, adopt and implement contingency provisions if and when a violation occurs after an area's redesignation to attainment. Therefore, in accordance with the discretion accorded it by statute, EPA may allow reasonable time for states to analyze data and address the causes and appropriate means of remedying a violation. In assessing what ''promptly'' means in this context, EPA also may take into account time for adopting and implementation of the appropriate measure. *Cf. Greenbaum* v. *EPA,* 370 F.3d 527, 541 (6th Cir. 2004).

As discussed in the proposed rule at 87 FR 14218, EPA has determined that Michigan's maintenance plan comports with the requirements set forth at section 175A of the CAA. The contingency plan portion of Michigan's maintenance plan delineates the State's planned actions in the event of future 2015 ozone standard violations or increasing ozone levels threatening a subsequent violation of the ozone standard.

Michigan has developed a contingency plan with two levels of triggered actions. A warning level response is triggered if a 4th high daily maximum 8-hour average ozone concentration of 74 ppb or greater occurs within the maintenance area. If a warning level response is triggered, Michigan will conduct a study to determine whether the ozone value indicates a trend toward higher ozone values and whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. Michigan commits to implementing necessary controls within 18 months.

An action level response is triggered if: (1) a two-year average of the 4th high daily maximum 8-hour average ozone concentration at a monitor within the maintenance area is 71 ppb or greater; or (2) if a violation of the 2015 ozone NAAQS is monitored within the maintenance area. If an action level is triggered and is not found to be due to an exceptional event,[32] malfunction, or noncompliance with a permit condition or rule requirement,[33] Michigan will determine what additional control measures are needed to assure future attainment of the 2015 ozone NAAQS.

Michigan's contingency plan for the Detroit area lists a number of possible contingency provisions. The list of possible contingency provisions in Michigan's plan include the following: (1) VOC or NO_X RACT rules for existing sources covered by Control Technique Guidelines, Alternative Control Guidelines, or other appropriate

[32] Should Michigan believe an action level response was triggered by an exceptional event, Michigan would need to submit an exceptional event demonstration in accordance with EPA's Exceptional Events Rule codified at 40 CFR 50.1, 50.14, and 51.930. Should EPA concur with the demonstration, the event-affected air quality data would be excluded from the data set used for certain regulatory decisions. Removal of such data would affect the monitoring values used to determine whether an action level response was triggered. Should EPA non-concur on the exceptional event demonstration or should an action level response still be triggered after removal of the affected data, Michigan would be required to address the action level trigger with control measures sufficient to return the area to attainment of the 2015 NAAQS.

[33] Should Michigan find that an action level response is triggered by malfunction or noncompliance with a permit or rule requirement, enforcement action or other measures to ensure an expeditious return to compliance may constitute an appropriate response to the trigger. Note that depending on the circumstances of the trigger, the appropriate response may be a combination of compliance assurance and contingency provision implementation.

guidance; (2) application of VOC RACT on existing smaller sources; (3) alternative fuel and diesel retrofit programs for fleet vehicle operations; (4) VOC or NO_X control on new minor sources (less than 100 tons per year); (5) increased VOC or NO_X emission offsets for new and modified major sources; (6) reduced idling programs; (7) trip reduction programs; (8) traffic flow and transit improvements; (9) increased turnover of legacy natural gas distribution pipelines; (10) stationary engine controls to reduce formaldehyde and NO_X emissions; (11) phase 2 architectural and industrial maintenance coatings (AIM) rules; (12) phase 5 consumer products rules; and, (13) additional measures as identified by EGLE. EGLE may also consider the timing of an action level trigger and determine if additional, significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and will constitute the response.

Upon triggering an action level response, Michigan may find that choosing a contingency provision from the list included in the maintenance plan is not necessary because there are significant new regulations already adopted that will address the elevated ozone levels. This does not mean that Michigan would be choosing not to implement control measures in response to a triggering event. A State can choose as its contingency provision any adopted but not fully implemented control measure providing that it is not included in the calculation of the maintenance inventory. The emissions reductions from these programs are real, not considered in maintenance plan emissions projections, and can be achieved more quickly since the State has already gone through the adoption process. To prohibit a State from using any control measure adopted prior to the actual triggering of a maintenance plan contingency provision would only penalize states that are proactive in addressing anticipated air quality problems.

Michigan's maintenance plan calls for the appropriate contingency provisions to be implemented within 18 months of a triggering event. In order to properly deal with potential future ozone standard violations and to comply with its own internal rulemaking procedure requirements, Michigan requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency provisions. The commenters provided no rationale for why a time period shorter than 18 months to adopt and implement contingency provisions is warranted. EPA finds that 18 months, as described in Michigan's maintenance plan, is a reasonable time period for Michigan to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct a potential monitored violation. This timeframe also conforms with EPA's many prior rulemakings on acceptable schedules for implementing section 175A contingency provisions as noted above.

Comment: The commenters argue that the maintenance plan should address the possibility of a violation of the NAAQS by committing Michigan to an expedited nonattainment designation process if that occurs.

Response: Under the CAA, a violation of the NAAQS subsequent to redesignation to attainment does not trigger an automatic redesignation to nonattainment. As demonstrated by the contingency provisions required by section 175A(d), the CAA clearly anticipates and provides for situations where an area might monitor a violation of the NAAQS after having been redesignated to attainment, and leaves it to the Administrator to determine whether redesignation to nonattainment and a new nonattainment plan SIP submission is necessary in such cases. Michigan's maintenance plan also accounts for this possibility by including a violation of the NAAQS as an action level trigger requiring the implementation of control measures to reduce ozone precursor emissions and bring the area back into attainment. Finally, EPA retains its authority under CAA section 107(d)(3)(A) to initiate a redesignation ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' Given this underlying authority, and the uncertainty of any cause of a potential future violation, we do not agree that it is necessary or appropriate to include the suggested commitment in the State's maintenance plan.

J. Maintenance Plan Modeling Platform

Comment: The commenters argue that because EGLE's 2019 emissions inventory shows emissions lower than in EPA's Emissions Inventory System, the 2016v2 model that EGLE used may be underpredicting emissions, which would impact the future emissions projections.

Response: The commenters misunderstand how 2016v2 emissions data are being used in the context of this redesignation. Air emissions modeling platform development is the process of preparing emission inventories for use in air quality models. Air quality models typically require hourly, gridded emissions of specific pollutants. An emissions modeling platform (hereafter referred to as emissions platform or platform) is the full set of emissions inventories, other data files, software tools, and scripts that process the emissions into the form needed for air quality modeling. Each platform relies on a version of the NEI for most of its data, although some adjustments are made to support air quality modeling. The 2016v2 platform incorporates emissions based on: MOVES3, the 2017 NEI nonpoint inventory (both anthropogenic and biogenic), the Western Regional Air Partnership oil and gas inventory, and updated inventories for Canada and Mexico. The 2016v2 platform includes emissions for the years 2016, 2023, 2026, and 2032. Methodologies are documented in the technical support document for the 2016v2 platform. The commenters have articulated no specific problems with any of the 2016v2 platform emission inventories or with the methodologies used to develop them.

EPA policy, as set forth in the Calcagni memorandum, and longstanding practice allows states to demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and to demonstrate maintenance by showing that future emissions are projected to remain below this level for ten years following redesignation.

Following this policy, Michigan selected a 2019 emission inventory to represent attainment level VOC and NO_X emissions, which is appropriate because it is one of the years in the period used to demonstrate monitored attainment of the NAAQS. In developing the 2019 attainment inventory for the Detroit area, Michigan interpolated between the 2016 and 2023 2016v2 platform inventories for point, nonpoint and nonroad inventories. For on-road emissions estimates, SEMCOG used EPA's MOVES3 model to generate emissions with local travel inputs including vehicle population, VMT, speeds, road types, Vehicle Hours of Travel, and vehicle age, as well as meteorological data. To demonstrate maintenance through 2035, Michigan developed emission inventories for 2035 and an interim year of 2025. To estimate point, nonpoint and nonroad emissions, Michigan used 2016v2 platform inventories. Specifically, for the 2025 interim year, Michigan interpolated between 2023 and 2026 2016v2 platform inventories. For the maintenance year, Michigan extrapolated to 2035 using the

2026 and 2032 2016v2 platform inventories. For on-road emissions in 2025 and 2035 SEMCOG used EPA's MOVES3 model to generate emissions with local travel inputs as described above. When comparing emissions between attainment year 2019 and maintenance year 2035, VOC and NO_X emissions decrease by 34.88 TPSD and 99.55 TPSD, respectively. Michigan's maintenance demonstration clearly follows the process set forth in the Calcagni memorandum, showing that future emissions are projected to decrease and remain below the level of the attainment inventory. Again, the commenters articulated no specific problems with Michigan's maintenance plan inventories or methodologies and suggested nothing specific that should have been done to improve those inventories.

In questioning the validity of these inventories for demonstrating maintenance, the commenters pointed to EPA's review of point source emissions data submitted through EIS. The commenters mistakenly inferred that EPA found all the inventories Michigan submitted based on the 2016v2 platform to underestimate emissions in comparison to EIS data. This is not the case. In reviewing Michigan's submission, EPA only compared the interpolated point source inventories for 2019 submitted by EGLE against point source emissions information available to EPA through EIS. EPA converted annual emission totals to a value of tons per ozone season day using the same conversion factors calculated by EGLE. Michigan's interpolated inventory estimates 2019 NO_X and VOC point source emissions to be 97.01 tons per ozone season day and 13.74 tons per ozone season day, respectively. Using EIS reported point source data and conversion factors, EPA estimated 2019 NO_X and VOC point source emissions to be 102.27 tons per ozone season day and 29.42 tons per ozone season day, respectively. While EIS-based 2019 point source estimates differed from estimates based upon interpolation between 2016v2 platform years, Michigan's maintenance demonstration remains valid. Regardless of whether EGLE had chosen to use point source emissions from EIS or from the 2016v2 platform in compiling its inventory for the 2019 attainment year, projected emissions for 2025 and future years would be well below the attainment inventory, as is demonstrated in Tables 4 and 5. Further, beyond making the statement that ''the 2016v2 model may be underpredicting emissions,'' the commenters offer no substantive evidence to support this conclusion.

TABLE 4—DETROIT NO_X EMISSIONS FOR 2019 ATTAINMENT YEAR (WITH EIS AND 2016V2 POINT SOURCE EMISSIONS), 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

Category	2019		2025	2035	Net change (2019–2035)	
	EIS point source	2016v2 interpolated point source			EIS point source	2016v2 interpolated point source
Point	102.27	97.01	80.8	76.44	−25.83	−20.57
Nonpoint	27.98	27.98	27.39	25.84	−2.14	−2.14
On-road	105.80	105.80	61.20	40.30	−65.50	−65.50
Nonroad	22.51	22.51	17.49	15.17	−7.34	−7.34
Total	258.56	253.30	186.91	157.75	−100.81	−95.55

TABLE 5—DETROIT VOC EMISSIONS FOR 2019 ATTAINMENT YEAR (WITH EIS AND 2016V2 POINT SOURCE EMISSIONS), 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

Category	2019		2025	2035	Net change (2019–2035)	
	EIS point source	2016v2 interpolated point source			EIS point source	2016v2 interpolated point source
Point	29.42	13.74	14.1	14.12	−15.30	0.38
Nonpoint	134.77	134.77	134.12	133.11	−1.66	−1.66
On-road	51.70	51.70	34.40	22.00	−29.70	−29.70
Nonroad	30.46	30.46	27.39	26.56	−3.90	−3.90
Total	246.35	230.67	209.97	195.79	−50.56	−34.88

Michigan's maintenance plan projected that in 2035, the area would see an overall reduction in NO_X and VOC emissions of 95.55 and 34.88 TPSD, relative to the 2019 attainment inventory. More than half of these reductions are attributable to the on-road sector with projected decreases of 65.50 and 29.70 TPSD in NO_X and VOC, respectively. The on-road sector was not interpolated or extrapolated. It was run using EPA's MOVES3 model and area specific data, which was not called into question by the commenters. The difference between interpolating point source emissions for 2019 rather than using emissions reported through EIS does not change the fact that projected emissions for future years 2025 and 2035 are below the level of the attainment inventory.

Comment: The commenters contend that the 2016v2 emissions platform-based air quality model predictions of ozone concentration decreases through 2023 appear overly optimistic, as the majority of the reductions would need to occur in the next two years. The commenters contend that unrealistic predictions by the air quality model render suspect Michigan's reliance on the 2016v2 emissions platform for its attainment projections and that EPA should explain how it can assure the improvements in air quality predicted by the air quality model.

Response: To clarify, Michigan and EPA are not relying on the air quality modeling's predictions (*i.e.,* the projected future design values) to meet the CAA's requirement that the maintenance plan provide for maintenance of the NAAQS for ten years following redesignation. Michigan only used the emissions inventories generated for the 2016v2 platform and is not relying on the results of the air quality model (*i.e.,* the modeled future design values that are estimated using the air quality modeling performed using that emissions platform). We do not agree that EPA has an obligation to assure the air quality model's predicted design values come to pass.

A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See* also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25413, 25430–25432 (May 12, 2003). EPA policy and longstanding practice allows states to demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and to project maintenance by showing that future emissions are projected to remain below this level for the next ten years. *See* Calcagni memorandum. Holding emissions at or below the level of attainment is adequate to reasonably assure continued maintenance of the standard. See 65 FR 37879, 37888 (June 19, 2000).

Comment: The commenters also express concern that some of the regulatory actions assumed in the 2016v2 emissions platform may not be implemented in the event of a change in Administration, causing emissions to rise.

Response: As noted above, EPA's longstanding practice is to permit states to ''provide for the maintenance of the NAAQS'' as required by CAA 175A by comparing current attainment emission inventories with projected future inventories. Inherent in the act of projection is some uncertainty; in order to accurately project future year inventories, the Agency must make assumptions that cannot be made enforceable, such as expectations about population growth and energy demand. We would also note that, as commenters point out, even adopted, enforceable measures can be revised. For the 2016v2 emissions platform, future year emissions were projected from the 2016 base case either by running models to estimate future year emissions from specific types of sources or by adjusting the base year emissions according to the best estimate of changes expected to occur in the intervening years. Rules and specific legal obligations that go into effect in the intervening years, along with anticipated changes in activity of the sector (*e.g.,* source retirements) were incorporated when possible. Documentation of the specific methodologies used to develop future year emissions for the 2016 emissions platform can be found in the technical support document for the 2016v2 platform. EPA contends that the methods used to develop the 2016v2 emissions platform were appropriate and it was reasonable for Michigan to use those emissions in developing inventories for the Detroit maintenance plan.

K. Approval of Infrastructure SIP

Comment: The commenters state that EPA must find that the State ''has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D'' of the CAA, which the commenters allege includes having an approved infrastructure SIP pursuant to CAA section 110(a)(2). The commenters allege that EPA's approval of Michigan's infrastructure SIP for the 2015 ozone NAAQS was entered in error, due to an oversight in failing to review and respond to comments from Sierra Club. The commenters allege that ''unless and until EPA reissues an approval that properly considers and responds to this comment, EPA should not consider Michigan to have an approved ozone infrastructure SIP for the purposes of redesignation.''

Response: As we noted in our March 14, 2022, proposed rulemaking, SIP requirements that are not linked with the area's ozone designation and classification are not ''applicable'' measures to evaluate when reviewing a redesignation request for the area under CAA section 107(d)(3)(E)(ii) and (v). We noted that section 110(a)(2)(D) requirements, like many section 110(a)(2) requirements, continue to apply to a State regardless of the designation of any one particular area within the State, and thus are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003). In addition, EPA believes that other section 110 elements that are not connected to an area's ozone nonattainment designation are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2015 ozone NAAQS. This approach is consistent with EPA's interpretation of the applicability of conformity requirements for purposes of CAA section 107(d)(3)(E)(ii) and (v), as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997), Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996), and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

In any case, on May 19, 2022 (87 FR 30420), EPA published a final rulemaking which corrected the omission of timely comment and response in our September 28, 2021, rulemaking approving most elements and disapproving the visibility protection requirements of CAA section 110(a)(2)(D)(i)(II) prong 4.[34] EPA has reissued the approval in question after responding to comments on the proposal, addressing concerns with Michigan's satisfaction of CAA section 110(a)(2)(E)(i) with respect to adequate resources.

L. Enforcement Authority

Comment: The commenters dispute the commitment in Michigan's SIP stating that the State ''has the authority to implement the requested SIP revision . . . includ[ing] the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.'' The commenters assert that the State does not have the authority to enforce emission control measures that may be needed to correct future ozone problems. The commenters rely on a decision from the Michigan Court of Claims which invalidated a State administrative rule, Michigan Administrative Code (MAC) 336.1430 ('Rule 430'), on the basis that the rule failed the State Administrative Procedures Act ''general applicability''

[34] Michigan has a partially approved Regional Haze Plan and is subject to FIPs for St. Marys Cement, Escanaba Paper Company, and Tilden Mining, a taconite processing facility. *See* 81 FR 21671 (April 12, 2016) and 83 FR 25375 (July 2, 2018) for more information on the FIPs that apply to this area.

requirement because of its focus on one particular facility. The commenters assert that EPA has failed to address the court's holding or explain why the Agency believes Michigan will have sufficient authority to impose enforceable emissions limitations as may be necessary when a particular polluter refuses to limit pollution as needed to bring an area into attainment with the NAAQS in the event of future violations of the NAAQS that trigger contingency provisions. The commenters urge EPA to reexamine whether Michigan has adequate authority to implement its maintenance plan in light of *U.S. Steel Corp.* and to disapprove the plan if the Agency concludes that Michigan does not.

Response: We do not agree that the *U.S. Steel Corp.* decision indicates that Michigan does not have authority to implement and enforce its maintenance plan. The State listed the following contingency provisions in its maintenance plan for the Detroit area: (1) VOC or NO_X RACT rules for existing sources covered by Control Technique Guidelines, Alternative Control Guidelines, or other appropriate guidance; (2) application of VOC RACT on existing smaller sources; (3) alternative fuel and diesel retrofit programs for fleet vehicle operations; (4) VOC or NO_X control on new minor sources (less than 100 tons per year); (5) increased VOC or NO_X emission offsets for new and modified major sources; (6) reduced idling programs; (7) trip reduction programs; (8) traffic flow and transit improvements; (9) increased turnover of legacy natural gas distribution pipelines; (10) stationary engine controls to reduce formaldehyde and NO_X emissions; (11) phase 2 architectural and industrial maintenance coatings (AIM) rules; (12) phase 5 consumer products rules; and, (13) additional measures as identified by EGLE. Given the nature of these provisions, we think it unlikely that these measures are designed to apply only to a single source, like the State rule at issue in the *U.S. Steel Corp.* decision, which the court found clearly applied to only one entity and could conceivably apply to only one entity. To the extent that the commenters are asserting that EPA should disapprove the State's maintenance plan because the State may need to target emissions from one particular source in the event of a future violation, and the 2017 Court of Claims decision calls into question whether the State could do so, we anticipate that the State will adopt future measures consistent with the applicable procedural State law requirements at issue in *U.S. Steel Corp.* The State has provided in its maintenance plan for twelve contingency provisions that on their face appear to be generally applicable, and it would be unreasonable to disapprove the SIP submission based on a measure the State has not adopted, nor suggested it would adopt, on the speculation that such a measure might be necessary.

Moreover, we note that in our May 19, 2022, final rulemaking correcting the omission in the September 28, 2021, rulemaking, EPA published a substantive response to Sierra Club's comment regarding Michigan's authority to enforce control measures. 87 FR 30420. As we noted then, EPA disagrees with the commenters' concern that the Michigan Court of Claims decision in *United States Steel Corp.* v. *Dept. of Environmental Quality,* indicates that Michigan lacks legal authority to regulate sources. EPA concluded that the court only decided that the State had improperly sought to impose emissions controls on the sources at issue through a rule that did not meet State law requirements for a ''rule of general applicability'' in violation of relevant State administrative procedures act requirements. EPA interprets the ruling to indicate that the State does have authority under Michigan law to impose necessary emission limitations on sources, as required to meet CAA requirements, via other legal mechanisms. In our May 19, 2022, final rulemaking, EPA identified several authorities by which Michigan may enforce its SIP.

M. Prevention of Significant Deterioration (PSD) Program

Comment: The commenters argue that EGLE did not properly implement the preconstruction monitoring requirement for several sources subject to PSD New Source Review (NSR), and thus the commenters contend that CAA section 107(d)(3)(E)(v), which requires that EPA determine the State has met all applicable SIP requirements described in CAA section 110, is not satisfied. The commenters assert that CAA section 110 includes a requirement to include provisions for the proper implementation of programs including PSD NSR. The commenters acknowledge that Michigan has adopted provisions meeting CAA requirements regarding preconstruction monitoring requirements into its SIP, but the commenters allege that the State has failed to properly implement those requirements. Specifically, the commenters State that Michigan has failed to collect air quality data as required from sources with net emissions increases of 100 tpy or more of VOCs or NO_X. The commenters also call into question the validity of the significant monitoring concentrations for ozone established in 40 CFR part 51 and 40 CFR part 52 based on a D.C. Circuit decision regarding Significant Monitoring Concentrations (SMCs) for particulate matter, and they state that the ozone SMCs are unlawful and must be vacated.

Response: CAA section 107(d)(3)(E)(v) states that EPA may not promulgate a redesignation of a nonattainment area to attainment unless ''the State containing such area has met all requirements applicable to the area under section 7410 [*i.e.,* section 110] of this title and Part D of this subchapter.'' Section 110, as it pertains to obligations for states, sets forth the required contents of the revisions to a State's implementation plan that must be adopted and submitted to EPA after the promulgation of a NAAQS. EPA therefore understands its role in determining whether CAA section 107(d)(3)(E)(v) is satisfied to be an inquiry into whether a State has adopted and submitted to EPA all those revisions to its SIP that are required by section 110 and part D. In this case, Michigan has met its obligations to submit those requirements applicable to it for purposes of redesignation.

As we noted in the March 14, 2022, proposed rulemaking, EPA fully approved Michigan's PSD program on March 25, 2010 (75 FR 14352), and most recently approved revisions to Michigan's PSD program on May 12, 2021 (86 FR 25954). The SIP-approved PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. *See* MAC R 336.2811.

We do not agree with the commenter that a State's implementation of its SIP is equivalent to whether the State has met the requirements of CAA section 110 and part D, which concern whether a State has made required revisions to its SIP. Any issues with respect to the State's application of the approved SIP are beyond the scope of this action and should be raised on a permit specific basis.

Similarly, comments regarding the lawfulness of EPA's PSD regulations pertaining to ozone at 40 CFR 51.166(i)(5)(i)(f) or 40 CFR 52.21(i)(5)(i)(f) are outside the scope of this action.

N. Supplemental Comments

Comment: In their March 14, 2023, supplemental comment, commenters contend that EPA cannot redesignate the

Detroit area until EPA has approved RACT and reasonably available control measures (RACM) for the area. Commenters note that under section 107(d)(3)(E), EPA cannot redesignate an area unless (among other things) ''the State containing such area has met all requirements applicable to the area under section [110] and part D of [title I of the Act].'' Effective March 1, 2023, EPA reclassified the Detroit ozone nonattainment area as Moderate. This triggered a requirement under sections 182(b)(2) and 182(f) of the CAA for Michigan to implement RACT for sources of VOCs and NO_X. The commenters, citing *Sierra Club* v. *U.S. EPA,* 793 F.3d 656 (6th Cir. 2015), contend that section 172(c)(1) of the CAA requires Michigan to implement RACM, regardless of whether the area is attaining the NAAQS.

The Commenters further contest EPA's position that, for purposes of redesignation ''all requirements applicable to the area'' are those that were due prior to the State's submittal of a complete redesignation request. The commenters cite the decision in *Sierra Club* v. *U.S. EPA* for the proposition that EPA does not have discretion to reinterpret the CAA's unambiguous requirement that nonattainment plans for areas in the Moderate category or worse must include RACT/RACM requirements. The commenters state, ''Just as EPA cannot excise [RACT/RACM] from the statutory requirement that a State meet 'all' requirements applicable to the area, EPA cannot create a wholesale exception to the State's requirement to meet 'all' requirements applicable to a moderate area based on the timing of the State's redesignation submission.'' The commenters assert that EPA's approach is contrary to the plain meaning of section 107(d)(3)(E)(v) that ''all'' means all. The commenters argue that the structure and purpose of the CAA confirm their interpretation, claiming that EPA's interpretation gives states an incentive to submit redesignation requests early, regardless of whether the State qualifies at the time of submission, in order to evade future requirements.

The commenters also contend that ''section 107(d)(3)(E) applies not only to redesignation requests from a State, but also to EPA's redesignation on its own initiative under section 107(d)(3)(A). Given this, EPA cannot explain why the submittal date of a redesignation request should have any relevance to section 107(d)(3)(E)(v)'s requirements.''

Response: Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications. Detroit was designated as nonattainment and classified as Marginal for the 2015 ozone NAAQS, effective August 3, 2018. As provided in subpart 2, for Marginal ozone nonattainment areas such as the Detroit area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and RACM under section 172(c)(1), reasonable further progress under section 172(c)(2), and contingency measures under section 172(c)(9).

The only RACT provision applicable to ozone areas classified as Marginal is contained in CAA section 182(a)(2)(A), which requires states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Detroit area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and, in any case, Michigan complied with this requirement for the Detroit area under the prior 1-hour ozone NAAQS.[35] With respect to RACM, areas classified as Marginal are not required to perform a RACM analysis. This is clearly stated in the 2008 Ozone NAAQS SIP Requirements Rule, ''Note that a RACM analysis is not required for Marginal nonattainment areas since an attainment demonstration is not required for those areas.''[36] EPA retained this approach in the Implementation Rule for the 2015 ozone NAAQS, based on the rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.[37]

The Detroit area was reclassified as Moderate under the 2015 ozone NAAQS effective March 1, 2023.[38] As a Moderate area, Detroit became subject to the RACT provisions of CAA section 182(b)(2) and RACM requirements associated with the attainment demonstration. These moderate RACT and RACM plans became due March 1, 2023.

CAA section 107(d)(3)(E)(v) provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless, among other things, ''the State containing such area has met all requirements applicable to the area under section 7410 of this title and Part D of this subchapter.'' Since the CAA was amended in 1990, EPA has consistently interpreted the term ''applicable'' in this provision not to include those section 110 and part D requirements that came due after the submittal of a complete redesignation request. *See* Calcagni memorandum at 4. Specifically, the Calcagni memorandum explains that ''When evaluating a redesignation request, Regions should not consider whether the State has met requirements that come due under the CAA after submittal of a complete redesignation request'' but that per CAA section 175A(c), the requirements of part D remain in force and effect for the area until such time as it is redesignated. *Id.,* n.3. *See* also Michael Shapiro Memorandum, September 17, 1993.

As EPA has explained in actions applying this interpretation over the past 30 years, reading the CAA in this way balances the reasonable expectations of a requesting State and the timing the CAA provides for EPA to act on State submissions. *See, e.g.,* 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor for the 1979 1-hour ozone NAAQS). Per CAA section 107(d)(3)(D), EPA must approve or deny a State's request for redesignation within 18 months of receipt of a complete redesignation submittal. With respect to SIP submittals addressing applicable CAA section 110 and part D requirements, CAA section 110(k)(2) requires EPA to act on such submissions within 12 months of a determination that the submission is complete (*i.e.,* maximum 18 months from submission, given the maximum time frame provided under CAA section 110(k) for statutorily deeming a submission complete). In order for EPA to approve a redesignation request, per the requirements of CAA section 107(d)(3)(E)(ii) it needs to have fully approved (per 110(k)) the ''applicable'' implementation plan, which again is defined by the ''applicable'' requirements for redesignation as set forth in CAA section 107(d)(3)(D)(v). Therefore, if EPA were to read the CAA as commenters suggest, by withholding any approval of a redesignation until the State made submissions for deadlines

[35] *See* 60 FR 46182 (September 7, 1994).

[36] 80 FR 12264, 12271 (March 6, 2015).

[37] 83 FR 62998, 63007–63008 (December 6, 2018).

[38] 88 FR 6633 (February 1, 2023).

occurring after the original date of submittal, and until EPA had acted on those submissions, the State might never be able to have the area redesignated. Each CAA requirement coming due during the pendency of EPA's review of a redesignation request carries with it a necessary implication that EPA must also fully approve the SIP submission made to satisfy that requirement in order for the area to be redesignated. We do not think it is a reasonable reading of the CAA to require states to make additional SIP submissions on which EPA would need to fully act before it could act on the redesignation request before it; such an interpretation would almost necessarily delay action on the redesignation request beyond the 18-month time frame. EPA's interpretation in no way obviates the ongoing obligation of states to continue to comply with requirements coming due after the submission of the redesignation request. It simply means that areas may be redesignated even though the State may not have complied with those requirements. *See* 60 FR at 12466.

Reviewing courts have upheld EPA's interpretation that requirements coming due after a complete redesignation request is submitted are not ''applicable'' for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding the redesignation of St. Louis based on the timing of submittal and deadline of requirements, even though by the time EPA acted on the State's redesignation it had been reclassified to a higher classification and was subject to more stringent SIP requirements, 68 FR 25418, 25424–27 (May 12, 2003)).

EPA disagrees with the commenters' assertion that this longstanding approach is contrary to the plain meaning of section 107(d)(3)(E)(v). Commenters emphasize that ''all means all'' but in doing so, they excise ''applicable'' from CAA section 107(d)(3)(E)(v). States must meet ''all requirements applicable,'' and EPA's 30-year interpretation of that phrase is that not every requirement is necessarily applicable for purposes of evaluating a redesignation request. EPA further disagrees with the commenters' assertion that this longstanding interpretation is inconsistent with the Sixth Circuit Court's decision in *Sierra Club* v. *U.S. EPA,* 793 F.3d 656 (2015). In that case, the CAA section 172(c)(1) RACT/RACM requirements at issue had come due prior to submission of a complete redesignation request. Moreover, even in the 2015 *Sierra Club* decision, the 6th Circuit acknowledged that it had previously held that CAA section 107(d)(3)(E)(v) ''could be read to 'limit the number of actual requirements within [CAA section 110] and Part D that apply to a given area,' '' quoting *Wall* v. *EPA,* 265 F.3d 426, 439 (2001), and noting that it had deferred to the Agency's view that part D transportation conformity requirements were not ''requirements applicable to the area'' under CAA section 107(d)(3)(E)(v). *Sierra Club* v. *EPA,* 793 F.3d at 669.

When Michigan submitted the redesignation request, on January 3, 2022, the Detroit area was classified as Marginal. As a Marginal area, Detroit had no applicable RACT or RACM requirements. The RACT and RACM requirements triggered by the reclassification of the Detroit area as Moderate did not become due until March 1, 2023, well after Michigan submitted a complete redesignation request for the Detroit area. Thus, per EPA's interpretation provided above, the Moderate RACT and RACM requirements are not ''requirements applicable to the area'' for purposes of CAA section 107(d)(3)(E)(v), and EPA is not barred from approving the redesignation in the absence of the State having met those requirements. EPA determined that Michigan's redesignation request was complete for purposes of redesignation because at the time it was submitted the Detroit area was attaining the 2015 ozone NAAQS and Michigan had submitted all applicable SIP requirements for purposes of redesignation. The redesignation request continues to be complete because the area has not violated the NAAQS since the redesignation request was submitted. Contrary to what was implied by the commenters, the State did not submit the redesignation request before the area qualified for redesignation. Had Michigan failed to submit all SIP requirements applicable for redesignation or failed to demonstrate that the Detroit area was attaining the NAAQS, the submission would not have been considered complete for purposes of redesignation. Hence there is no incentive for states to submit a redesignation request before an area qualifies for redesignation.

Finally, we do not agree that commenters' observations that CAA section 107(d)(3)(E) applies also to redesignations initiated by EPA under CAA section 107(d)(3)(A) is relevant to which requirements should be considered ''applicable'' for purposes of CAA section 107(d)(3)(E)(v). The CAA contemplates that EPA-initiated redesignations under subsection (A) will be followed by response and submission from the State. *See* CAA section 107(d)(3)(B) and (C). While subsection (C) contemplates that the Administrator can promulgate some redesignations even in the absence of a State submission, other requirements in CAA section 107(d)(3)(E) suggest that states must play a key role for redesignations from nonattainment to attainment; in particular, the requirement under CAA section 107(d)(3)(E)(iv) that a maintenance plan be fully approved, because such plan would need to be prepared and submitted by a State. Other redesignations, such as redesignations from attainment or unclassifiable to nonattainment, are not subject to CAA section 107(d)(3)(E), and can therefore be promulgated without any submission from the State, as suggested by CAA section 107(d)(3)(C).

Comment: In their March 14, 2023, supplemental comment, commenters raise several additional issues. First, commenters contend that EPA's redesignation action was ''constructively reopened for comment'' given commenters' contention that EPA ''did not finalize its proposed redesignation based on the 2019–2021 data'' and 2022 monitoring data is ''a critical component of the 2020–2022 design value.'' Second, commenters reference EGLE's January 3, 2023, exceptional events demonstration for the East 7 Mile monitor, and state that ''they do not believe EGLE has adequately supported its exceptional event demonstration to meet the high evidentiary standard required to exclude the maximum daily 8-hour ozone average.'' The commenters suggest instead that ozone concentrations at the monitor may be affected by the Stellantis auto assembly complex. Third, commenters reference the requirement at CAA section 107(d)(E)(3)(iii) that EGLE must demonstrate that improvement in air quality is due to permanent and enforceable reductions in emissions, and claim that EGLE must complete such an analysis for 2022. Lastly, commenters reference Executive Order 12898, and claim that finalizing this redesignation without providing an opportunity for public comment on 2022 data would violate EPA policy regarding providing fair treatment and meaningful involvement of all people. Commenters also claim the weight-of-evidence analysis underlying EPA's concurrence determination on an exceptional events demonstration is ''inherently biased against environmental justice communities.''

Response: Many of the commenters' contentions are based on a misunderstanding of EPA's consideration of 2022 data within this final action. EPA is finalizing our March 14, 2022, proposed approval of EGLE's January 3, 2022, request to redesignate the Detroit area based on attaining monitoring data for 2019–2021, and EPA's determination that the area meets all other requirements for redesignation at CAA section 107(d)(3)(E). As noted above, EPA's determination under CAA section 107(d)(3)(E)(i) also relies on our final action on EPA's concurrence of a January 26, 2023, demonstration submitted by EGLE, as well as preliminary monitoring data, which together show the area has continued to attain the standard subsequent to the 2019–2021 period. Contrary to the commenters' contention that EGLE must demonstrate that attainment in 2020–2022 was due to permanent and enforceable measures, EPA's determination under CAA section 107(d)(3)(E)(iii) is based only on the 2019–2021 period. EPA also disagrees that the redesignation action was ''constructively reopened for comment'' given that EPA's determination is based on the 2019–2021 period and continued attainment since that period, and not based on the 2020–2022 design value.

Although this redesignation is related to EPA's Clean Data Determination based on 2020 to 2022 data, regarding the data set used for regulatory purposes, EPA clearly and properly proposed that action and responded to public comments in that final rulemaking. Further, EPA conducted extensive public outreach during that public comment period, including notification of interest groups before publication of the proposed action in the **Federal Register**, creation of a public-facing website including fact sheets, and translation of materials into Arabic and Spanish.[39] EPA disagrees that further public involvement is required in order for EPA to take final action. Public notice and opportunity to comment were provided consistent with applicable requirements, and further information about additional engagement is offered earlier in this RTC.

Regarding commenters' claims that the weight-of-evidence approach of an exceptional events demonstration is ''inherently biased against environmental justice communities,'' the claim that EGLE's demonstration did not ''meet the high evidentiary standard,'' or the claim that emissions may be affected by the Stellantis facility, EPA already addressed substantially similar comments in a separate final rulemaking, and these comments have no further relevance to this action.

V. Final Actions

EPA is determining that the Detroit nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021. EPA is also approving, as a revision to the Michigan SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Detroit area in attainment of the 2015 ozone NAAQS through 2035. EPA is also determining that the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Detroit area from nonattainment to attainment for the 2015 ozone NAAQS. Finally, EPA is finding adequate and approving the newly established 2025 and 2035 motor vehicle emissions budgets. Specifically, EPA is finding adequate and approving the budgets for 2025 (*i.e.,* an interim year) and 2035 (*i.e.,* the last year of the maintenance plan) as proposed. The 2025 budgets are 47.86 TPSD of VOCs and 104.35 TPSD of NO_X and the 2035 budgets are 44.67 TPSD of VOCs and 102.41 TPSD of NO_X including the assigned safety margins.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment NSR permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive PSD permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866, 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in

[39] *https://www.epa.gov/mi/detroit-clean-data-determination-2015-ozone-air-quality-standard.*

UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a State action implementing a Federal standard.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. Demographic data identifies that the Detroit area includes communities that are pollution-burdened and underserved. Further, EPA performed a screening-level analysis using EPA's EJSCREEN to identify environmental burdens and susceptible populations in communities in the Detroit area.

EPA believes that this action is not likely to change existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. While EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, approval of Michigan's redesignation request for the 2015 ozone NAAQS would not exacerbate existing pollution exposure or burdens for populations in the Detroit area.

As discussed in the Environmental Justice Considerations section and Response to Comments section of this preamble, there is no information to support a conclusion that EGLE's implementation of its 2015 ozone SIP, including the maintenance plan now being approved (including contingency measures) would result in a disparate impact on minority populations (people of color and/or Indigenous peoples) and low-income populations.

K. Congressional Review Act

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

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: May 12, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended under ''Maintenance Plans'' by adding an entry for ''Ozone (8-Hour, 2015)'' before the entry for ''Particulate matter'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * *	*	*	*	*
Maintenance Plans				
Ozone (8-Hour, 2015)	Detroit area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	1/3/2022	5/19/2023, [INSERT **FEDERAL REGISTER** CITATION].	
* * *	*	*	*	*

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

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

§ 81.323 Michigan.

* * * * *

MICHIGAN—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * *	*	*	*	*
Detroit, MI Livingston County. Macomb County. Monroe County. Oakland County. St Clair County. Washtenaw County. Wayne County. .	May 19, 2023	Attainment.		

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

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

* * * * *

[FR Doc. 2023–10563 Filed 5–18–23; 8:45 am]

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FEDERAL REGISTER

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Part V

The President

Presidential Determination No. 2023–08 of May 11, 2023—Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Federal Register
Vol. 88, No. 97
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2023–08 of May 11, 2023

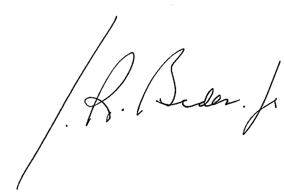
Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration, including the report submitted in April 2023, and other relevant factors, including global economic conditions, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will continue to monitor this situation closely.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, May 11, 2023

[FR Doc. 2023–10913
Filed 5–18–23; 11:15 am]
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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**.

Last List April 12, 2023

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