FEDERAL REGISTER

Vol. 88 Thursday,
No. 105 June 1, 2023

Pages 35729–36210

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 88, No. 105

Thursday, June 1, 2023

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.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 88, No. 105
Thursday, June 1, 2023

Presidential Documents

Title 3—

The President

Proclamation 10587 of May 26, 2023

Prayer for Peace, Memorial Day, 2023

By the President of the United States of America

A Proclamation

On Memorial Day, we honor America's beloved daughters and sons who gave their last full measure of devotion to this Nation. We can never fully repay the debt we owe these fallen heroes. But today, we vow to rededicate ourselves to the work for which they gave their lives, and we recommit to supporting the families, caregivers, and survivors they left behind.

For generations, stretching back to the formation of our country, these courageous people answered duty's call, willing to give their lives for that which we all hold dear. They fought for our Independence. They defended our democracy. They sacrificed for our freedom. And today, as they lie in eternal peace, we continue to live by the light of liberty that they so bravely kept burning bright around the world.

This is always a day where pain and pride are mixed together. To all those who are mourning the loss of a service member—including America's Gold Star Families—we see you and grieve with you. And we know that on this day especially, the pain of their absence can feel overwhelming. But for so many of you, that pain is wrapped around the knowledge that your loved one was part of something bigger than any of us; that they chose a life of mission and purpose; and that they dared all, risked all, and gave all to preserve and defend an idea unlike any other in human history: the United States of America.

These brave service members are not only the heart and soul of our country—they are the very spine. Today—and every day—we remember their service and ultimate sacrifice to our Nation. We reflect on our sacred and enduring vow to care for their families. And together, as we pause and pray, we pledge to continue defending freedom and democracy in their honor. May God bless our fallen heroes, and may God protect our troops.

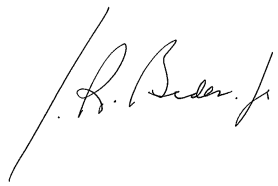
In honor and recognition of all of our fallen service members, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested that the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer and reflection. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim Memorial Day, May 29, 2023, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time when people might unite in prayer and reflection. I urge the press, radio, television, and all other information media to cooperate in this observance. I further ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I request the Governors of the United States and its Commonwealths and Territories, and the appropriate officials of all units of government, to direct

that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I encourage families, friends, and neighbors to post tributes to our fallen service members through the Veterans Legacy Memorial at vlm.cem.va.gov so that we may learn more about the lives and contributions of those buried in National, State, and Tribal veteran cemeteries. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

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



[FR Doc. 2023–11781
Filed 5–31–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 105
Thursday, June 1, 2023

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1204; Project Identifier AD–2023–00340–A; Amendment 39–22448; AD 2023–11–03]

RIN 2120–AA64

Airworthiness Directives; Honda Aircraft Company LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–18–03, which applied to certain Honda Aircraft Company LLC (Honda) Model HA–420 airplanes. AD 2022–18–03 required incorporating temporary revisions into the airplane flight manual (AFM) and the quick reference handbook (QRH) that modify procedures for windshield heat operation until the affected windshield assemblies are replaced. This AD retains all actions required by AD 2022–18–03 and corrects typographical errors in certain document numbers specified in certain paragraphs of the regulatory information. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 16, 2023.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in this AD as of September 22, 2022 (87 FR 54134, September 2, 2022).

The Director of the Federal Register previously approved the incorporation by reference of a certain other publication listed in this AD as of April 18, 2022 (87 FR 14155, March 14, 2022).

The FAA must receive any comments on this AD by July 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1204; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, NC 27410; phone: (336) 662–0246; website: *hondajet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. 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–2023–1204.

FOR FURTHER INFORMATION CONTACT: Bryan Long, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5578; email: *9-ASO-ATLACO-ADs@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2022–18–03, Amendment 39–22154 (87 FR 54134, September 2, 2022), (AD 2022–18–03), for certain serial-numbered Honda Model HA–420 airplanes, with a certain windshield assembly installed. AD 2022–18–03 required incorporating temporary revisions into the AFM and the QRH that modify procedures for windshield heat operation until the affected windshield assemblies are replaced. AD 2022–18–03 resulted from a report of in-flight smoke and fire that initiated from the windshield heat power wire braid. The FAA issued AD 2022–18–03 to prevent arcing of the windshield heat power wire braid, which could ignite the wire sheathing and sealant and the windshield acrylic, resulting in possible smoke and fire in the cockpit.

Actions Since AD 2022–18–03 Was Issued

Since the FAA issued AD 2022–18–03, typographical errors were found in the document numbers referencing one AFM and two QRHs in paragraphs (g)(1)(ii) through (iv) of the regulatory information. This AD retains all actions required by AD 2022–18–03 and corrects the typographical errors in the identified document citations. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

This AD requires the following service information, which the Director of the Federal Register approved for incorporation by reference (IBR) on September 22, 2022 (87 FR 54134, September 2, 2022).

- Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29000–003–001 Rev E.
- Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev C.
- HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev E.
- HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29001–007–001 Rev C.

This AD also requires the following service information, which the Director of the Federal Register approved for IBR on April 18, 2022 (87 FR 14155, March 14, 2022).

- Honda Aircraft Company Alert Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021 (Honda SB–420–56–002, Revision B).

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.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the Service Information.''

Differences Between This AD and the Service Information

Honda issued temporary revisions to the AFM, QRH, and electronic checklist (ECL) prior to issuing Honda SB–420–56–002, Revision B, which specifies replacement of the windshield assemblies. Honda SB–420–56–002, Revision B, does not specify incorporating the temporary revisions to the AFM, QRH, and ECL but addresses removal if the temporary revisions were incorporated. This AD does not require incorporating or removing the temporary revisions to the ECL because the ECL is not part of the approved type design of the airplane. All pertinent requirements would be addressed through the AFM.

Justification for Immediate Adoption and Determination of the Effective Date

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

Since this action retains all of the requirements of AD 2022–18–03 and only corrects obvious errors in document citations, it is unlikely that the FAA will receive any adverse comments or useful information about this AD from U.S. operators. Accordingly, notice and opportunity for prior public comment are unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''FAA–2023–1204 and Project Identifier AD–2023–00340–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Bryan Long, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 156 airplanes of U.S. registry. There are 475 affected windshield assemblies worldwide, and the FAA has no way of knowing the number of affected windshield assemblies installed on U.S. airplanes. The estimated cost on U.S. operators reflects the maximum possible cost based on the 156 airplanes of U.S. registry. This new AD only retains the actions required by AD 2022–18–03 and, therefore, adds no new costs to affected operators.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Insert revised procedures in the AFM and QRH.	1 work-hour × $85 per hour = $85	$0	$85	$13,260
* Windshield assembly replacement (both left and right assemblies).	154 work-hours × $85 per hour = $13,090	153,286	166,376	25,954,656
Remove revised procedures from the AFM and QRH.	1 work-hour × $85 per hour = $85	0	85	13,260

* On most airplanes, both the left and right windshield assemblies have a serial number affected by the unsafe condition, and the above costs represent replacement of both the left and right windshield assemblies. However, some airplanes may only have one affected windshield assembly and not require replacement of both.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–18–03, Amendment 39–22154 (87 FR 54134, September 2, 2022); and

■ b. Adding the following new airworthiness directive:

2023–11–03 Honda Aircraft Company LLC: Amendment 39–22448; Docket No. FAA–2023–1204; Project Identifier AD–2023–00340–A.

(a) Effective Date

This airworthiness directive (AD) is effective June 16, 2023.

(b) Affected ADs

This AD replaces AD 2022–18–03, Amendment 39–22154 (87 FR 54134, September 2, 2022) (AD 2022–18–03).

(c) Applicability

This AD applies to Honda Aircraft Company LLC Model HA–420 airplanes, serial numbers 42000011 through 42000179, 42000182, and 42000187, certificated in any category, with a windshield assembly installed that has a part number and serial number listed in table 5 of the Accomplishment Instructions in Honda Aircraft Company Alert Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021 (Honda SB–420–56–002, Revision B).

(d) Subject

Joint Aircraft System Component (JASC) Code 3040, Windshield/Door Rain/Ice Removal.

(e) Unsafe Condition

This AD was prompted by a report of in-flight smoke and fire that initiated from the windshield heat power wire braid. The FAA is issuing this AD to prevent arcing of the windshield heat power wire braid, which could ignite the wire sheathing and sealant and the windshield acrylic. This condition, if not addressed, could lead to cockpit smoke and fire.

(f) Compliance

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

(g) Temporary Revisions to the Airplane Flight Manuals (AFMs) and Quick Reference Handbooks (QRHs)

(1) Within 15 days after the effective date of this AD, revise the existing AFM and QRH for your airplane by inserting the pages identified in the applicable temporary revisions listed in paragraphs (g)(1)(i) through (iv) of this AD.

(i) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev C.

(ii) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev E.

(iii) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29000–003–001 Rev E.

(iv) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29001–007–001 Rev C.

(2) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4), and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Windshield Assembly Replacement

Within 24 months after September 22, 2022 (the effective date of AD 2022–18–03), for each windshield assembly with a part number and serial number listed in table 5 of the Accomplishment Instructions in Honda SB–420–56–002, Revision B, replace the windshield assembly in accordance with step (2) or (3) of the Accomplishment Instructions in Honda SB–420–56–002, Revision B.

(i) Removal of Revisions to the AFMs and QRHs

Before further flight after replacing the windshield assemblies required by paragraph (h) of this AD, remove the AFM and QRH pages that were required by paragraph (g) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification 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 branch, send it to the attention of the person identified in paragraph (k) of this AD.

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

(3) AMOCs approved previously in accordance with AD 2022–05–13, Amendment 39–21965 (87 FR 14155, March 14, 2022), are approved as AMOCs for the corresponding requirements in paragraph (g) of this AD.

(4) AMOCs approved previously in accordance with AD 2022–18–03 are approved as AMOCs for the corresponding requirements in paragraph (g) of this AD.

(5) For service information that contains steps that are labeled as ''Required for Compliance'' (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Bryan Long, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5578; email: *9-ASO-ATLACO-ADs@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.

(3) The following service information was approved for IBR on September 22, 2022 (87 FR 54134, September 2, 2022).

(i) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29000–003–001 Rev E.

(ii) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev C.

(iii) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev E.

(iv) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29001–007–001 Rev C.

(4) The following service information was approved for IBR on April 18, 2022 (87 FR 14155, March 14, 2022).

(i) Honda Aircraft Company Alert Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021.

(ii) [Reserved]

(5) For service information identified in this AD, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, NC 27410; phone: (336) 662–0246; website: *hondajet.com*.

(6) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) 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 25, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–11636 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1120; Airspace Docket No. 23–AEA–09]

RIN 2120–AA66

Amendment of Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airway V–376; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–376 by removing the Nottingham, MD (OTT), VOR/Tactical Air Navigational System (VORTAC) from the route description and replacing it with the Casanova, VA (CSN), VORTAC. This action is required due to the planned decommissioning of the Nottingham, MD (OTT), VORTAC as part of FAA's VOR Minimum Operational Network (MON) program. This action does not change the alignment, altitudes, or operating requirements of V–376. In addition, language is added to exclude the airspace within restricted areas R–6601A, R–6601B, and R–6601C.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates a navigational aid (NAVAID) used to describe VOR Federal airway V–376.

Background

VOR Federal airway V–376 currently extends from Richmond, VA, to the IRONS, MD, Fix. The IRONS Fix is identified by the intersection of the Richmond, VA (RIC), VORTAC 009° and the Nottingham, MD (OTT), VORTAC 238° radials. Because the Nottingham, MD (OTT), VORTAC is scheduled to be decommissioned, a radial from another suitable NAVAID must be substituted to identify the IRONS Fix. In this case, a radial from the Casanova, VA (CSN), VORTAC is already associated with the IRONS Fix in the FAA's National Airspace System Resource (NASR) database. Therefore, the Casanova, VA 100°(T)/106°(M) radial replaces the Nottingham 238° radial in the V–376 description. Note that only True degrees are stated in the route's regulatory description set forth below.

A review of airway V–376 shows that the route traverses restricted areas R–6601A, R–6601B, and R–6601C as well as R–6612. Therefore, the exclusionary language must be amended to add the additional restricted areas.

Incorporation by Reference

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

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

The Rule

This action amends 14 CFR part 71 by updating the NAVAID used in the description of VOR Federal airway V–376. Because the Nottingham, MD (OTT), VORTAC is scheduled for decommissioning, it must be removed from the airway description. This action removes ''Nottingham, MD 238°'' and replaces it with ''Casanova, VA 100°''. In addition, a review of airway V–376 shows that the route traverses restricted areas R–6601A, R–6601B, and R–6601C. However, those restricted areas are not included in the exclusionary language of the route description. This action amends the exclusionary language by removing the words ''The airspace within R–6612 is excluded'' and replacing them with ''The airspace

within R–6601A, R–6601B, R–6601C, and R–6612 is excluded when active.''

This action consists of administrative changes only and does not affect the alignment, altitudes, or navigation along airway V–376. 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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal airway V–376 by removing the OTT VORTAC from the route description and replacing it with the CSN VORTAC due to the planned decommissioning of the OTT VORTAC does not change the alignment, altitudes, or operating requirements of V–376, and therefore, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points) and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) VOR Federal Airways

* * * * *

V–376 [Amended]

From Richmond, VA; to INT Richmond 009° and Casanova, VA 100° radials. The airspace within R–6601A, R–6601B, R–6601C, and R–6612 is excluded when activated.

* * * * *

Issued in Washington, DC, on May 25, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–11661 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31488; Amdt. No. 4062]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective June 1, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 1, 2023.

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

For Examination

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

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

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

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

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

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on May 12, 2023.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
15–Jun–23	OH	Hamilton	Butler County Rgnl/Hogan Fld	3/6340	3/13/23	This NOTAM, published in Docket No. 31486, Amdt No. 4060, TL 23–13, (88 FR 32961, May 23, 2023) is hereby rescinded in its entirety.
15–Jun–23	AK	Valdez	Valdez Pioneer Fld	3/6450	4/25/23	LDA–H, Amdt 2D.
15–Jun–23	NY	Cortland	Cortland County/Chase Fld	3/6586	4/25/23	VOR–A, Orig.
15–Jun–23	GA	Nashville	Berrien County	3/7231	4/26/23	RNAV (GPS) RWY 10, Orig–A.
15–Jun–23	AR	Little Rock	Bill And Hillary Clinton Ntl/Adams Fld	3/7345	4/27/23	ILS OR LOC RWY 4R, Amdt 2F.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
15–Jun–23	AR	Little Rock	Bill And Hillary Clinton Ntl/Adams Fld	3/7347	4/27/23	ILS OR LOC RWY 22R, ILS RWY 22R (SA CAT I), ILS RWY 22R (CAT II), ILS RWY 22R (CAT III), Amdt 3A.
15–Jun–23	OH	Painesville	Concord Airpark	3/9003	5/1/23	VOR OR GPS–A, Orig–C.
15–Jun–23	NV	Reno	Reno/Tahoe Intl	3/9561	5/2/23	ILS Z OR LOC Z RWY 17R, Amdt 1.

[FR Doc. 2023–11623 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31487; Amdt. No. 4061]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective June 1, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 1, 2023.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

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

SUPPLEMENTARY INFORMATION:

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on May 12, 2023.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 15 June 2023

Rifle, CO, KRIL, ILS RWY 26, Amdt 4
Rifle, CO, KRIL, RNAV (GPS) W RWY 26, Amdt 2
Rifle, CO, KRIL, RNAV (GPS) X RWY 26, Amdt 2
Rifle, CO, KRIL, RNAV (GPS) Y RWY 8, Amdt 2
Coeur D'Alene, ID, KCOE, ILS OR LOC RWY 6, Amdt 5G
Coeur D'Alene, ID, KCOE, RNAV (GPS) RWY 6, Orig-F
Delphi, IN, 1I9, RNAV (GPS) RWY 18, Orig
Delphi, IN, 1I9, RNAV (GPS) RWY 36, Orig
Delphi, IN, 1I9, Takeoff Minimums and Obstacle DP, Orig
Grand Island, NE, KGRI, RNAV (GPS) RWY 13, Amdt 2
Grand Island, NE, KGRI, RNAV (GPS) RWY 17, Amdt 2
Newark, NJ, KEWR, COPTER ILS Y OR LOC Y RWY 4L, Amdt 2
Newark, NJ, KEWR, ILS Z OR LOC Z RWY 4L, ILS Z RWY 4L (SA CAT I), ILS Z RWY 4L (SA CAT II), Amdt 16
Newark, NJ, KEWR, RNAV (GPS) RWY 4L, Amdt 3
Readington, NJ, N51, Takeoff Minimums and Obstacle DP, Amdt 1A
Salem, OR, KSLE, ILS OR LOC Z RWY 31, Amdt 32
Salem, OR, KSLE, LOC BC RWY 13, Amdt 10
Salem, OR, KSLE, LOC Y RWY 31, Amdt 5
Salem, OR, KSLE, Takeoff Minimums and Obstacle DP, Amdt 10
Richmond, VA, KRIC, ILS OR LOC RWY 34, ILS RWY 34 (SA CAT I), ILS RWY 34 (CAT II), ILS RWY 34 (CAT III), Amdt 15A

Rescinded: On May 11, 2023 (88 FR 30223), the FAA published an amendment in Docket No. 31483, Amdt No. 4057, to part 97 of the Federal Aviation Regulations under § 97.33. The following entry for, Huntington, WV, effective June 15, 2023, is hereby rescinded in its entirety:

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

[FR Doc. 2023–11621 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 42

[Public Notice: 12017]

RIN 1400–AF60

Visas: Immigrant Visas; Certain Afghan Applicants

AGENCY: Department of State.

ACTION: Temporary final rule.

SUMMARY: This final rule (TFR) temporarily amends Department of State (Department) regulations to provide that Afghan nationals applying for an immigrant visa as an immediate relative as defined in the INA or in a family preference immigrant visas category are exempt from the requirement to pay an immigrant visa (IV) application processing fee and a domestic Affidavit of Support review fee.

DATES: This rule is effective June 1, 2023, until December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Acting Senior Regulatory Coordinator, Visa Services, Bureau of Consular Affairs, Department of State; telephone (202) 485–7586, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

I. What changes to 22 CFR 22.1 and 42.71 does this TFR make?

The Department is temporarily amending 22 CFR 22.1 and 42.71 to exempt Afghan nationals from the requirement to pay the IV application processing and domestic Affidavit of Support review fees if they are applying for an IV as an immediate relative as defined in section 201(b)(2)(A)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1151(b)(2)(A)(i) or in a family preference IV category as provided in section 203(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1153(a).

II. Why is the Department making these changes?

Since the fall of the Afghan government in August 2021, the United States has welcomed more than 88,000 Afghans through Operation Allies Welcome (OAW), an all-of-government effort to relocate to the United States citizens and lawful permanent residents who wished to leave Afghanistan, along with special immigrant visa (SIV) applicants, immediate family members of SIV applicants, and other Afghans at risk. Many additional Afghans who did not relocate to the United States through OAW but who qualify for an IV as an immediate relative or in a family preference IV category because they have qualifying relationships with a U.S. citizen or U.S. lawful permanent resident and seek to immigrate to the United States.

On August 31, 2021, the U.S. Embassy in Kabul, Afghanistan suspended operations indefinitely.[1] Since that time, the Department has continued its efforts to assist U.S. citizens, lawful permanent residents, and other Afghans at risk through its Office of the Coordinator for Afghan Relocation Efforts. In the absence of regular consular operations in Afghanistan, Afghans applying for an immigrant visa must apply and personally appear at a U.S. Embassy or consulate in another country.

Under section 222(a) of the INA, 8 U.S.C. 1152(a), every noncitizen applying for an immigrant visa is required to submit an application in the form and manner and at such place as

[1] Security Message: Suspension of Operations, *https://af.usembassy.gov/security-message-suspension-of-operations/* (August 31, 2021).

prescribed by regulation. In accordance with the Department's regulations, an individual applying for an immigrant visa must pay the fee prescribed by the Secretary of State for the processing of immigrant visa applications, subject to limited, enumerated exceptions. 22 CFR 42.71; *see also* 22 CFR 22.1. Immigrant visa application processing fees are listed in Item 32 within the Department's Schedule of Fees for Consular Services (''Schedule of Fees''), published at 22 CFR 22.1. The immigrant visa application processing fee for an individual applying as an immediate relative or for a visa in a family preference IV category is $325.

Section 212(a)(4)(C)(ii) of the INA, 8 U.S.C. 1182(a)(4)(C)(ii), provides that the person petitioning for an applicant's admission, and any additional or alternative sponsor, as appropriate, must execute an affidavit of support (Form I–864) as described in section 213A of the INA, 8 U.S.C. 1183a. The National Visa Center reviews, for clerical completeness, Form I–864 and related documents for applicants who are the beneficiary of a Form I–130, Petition for Alien Relative, submitted to USCIS. The Department charges a fee for Affidavit of Support review when the affidavit is reviewed domestically. The current domestic Affidavit of Support review fee is $120.

This temporary final rule will provide for fee exemptions to qualified applicants through December 31, 2024, and is designed to help Afghan nationals resettle and, in many cases, reunite with family members in the United States. These exemptions reflect the Department's ongoing commitment to resettle Afghan nationals at risk due to the fall of the Afghan government, as they will facilitate the reunification of Afghans with their qualifying family members in the United States. These fee exemptions are not retroactive.

The Department is publishing this rule as a temporary final rule, which will automatically expire on December 31, 2024. The Department anticipates that this duration is a sufficient time period for Afghan nationals who are at risk and who wish to immigrate to the United States to benefit from the fee relief. This rule applies to applications dated after the effective date of this rulemaking.

III. Regulatory Findings

A. Administrative Procedure Act

As this rule involves a foreign affairs function of the United States, it is excepted from both the delayed effective date and notice and comment requirements of 5 U.S.C. 553(a)(1).

Under 5 U.S.C. 553(a)(1), notice-and-comment requirements of the Administrative Procedure Act do not apply ''to the extent there is involved . . . a military or foreign affairs function of the United States.'' This exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (quotation marks omitted). In addition, although the text of the Administrative Procedure Act does not require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing. E.g., *Yassini* v. *Crosland,* 618 F.2d 1356, 1360 n.4 (9th Cir. 1980). This rule satisfies both standards.

This rulemaking to exempt Afghan nationals from certain IV fees clearly and directly involves foreign affairs, as the U.S. government's commitment and efforts in furtherance of Operation Allies Welcome, Enduring Welcome, and successor operations to relocate and resettle Afghans who have provided valuable assistance to the U.S. government over the past two decades, and their family members, reflects one of the U.S. government's most significant foreign policy goals in recent years. These measures specifically will significantly ease the financial burden of Afghan applicants seeking to join U.S. citizen or lawful permanent resident family members in the United States, clearly and directly reflecting U.S. foreign policy as the Department seeks to uphold its commitments to assist many Afghans and their family members who have assisted the U.S. government. Visa applicants from Afghanistan are currently unable to apply in their home country due to the suspension of operations of the U.S. Embassy in Kabul, and must travel to other locations, often at their own cost and risk. For such individuals, particularly those of whom are applying for immediate relative and family preference immigrant visas, the payment of visa processing fees and fees for domestic processing of the Affidavit of Support, are significant, with each applicant paying $445 in immigrant visa processing fees alone, in addition to other associated required fees not addressed by this rulemaking, including for example the cost of a required medical examination and travel expenses to the United States. These significant costs can serve as a barrier to applicants completing their applications and being able to travel to the United States to reunite with family members, and consequently, this rulemaking to exempt such applicants from certain fees clearly and directly involves a foreign affairs function.

Similarly, solicitation of public notice and comment to this foreign policy exercise would have definitely undesirable international consequences. Foreign governments or parts thereof may have interests in this rule as a matter of their foreign policy goals with respect to U.S. efforts to relocate and resettle Afghan Allies and other Afghans at risk, many of whom must transit and complete visa processing in third countries in order to immigrate to the United States. Foreign governments or entities, including entities that oppose U.S. objectives, may seek to disrupt and potentially harm the bilateral relationships between the U.S. and such countries through participation in the notice and comment process. As a DOJ representative stated during hearings on the Administrative Procedure Act, ''[a] requirement of public participation in . . . promulgation of rules to govern our relationships with other nations . . . would encourage public demonstrations by extremist factions which might embarrass foreign officials and seriously prejudice our conduct of foreign affairs.'' Administrative Procedure Act: Hearings on S. 1663 Before the Subcomm. on Admin. Practice & Procedure of the S. Comm. on the Judiciary, 88th Cong. at 363 (1964). The time necessary to solicit and respond to public comments on the rule would further delay State's ability to exempt these individuals from immigrant visa fees, significantly hampering State's ability to advance the described foreign policy objectives of upholding the U.S. government's commitment to the Afghan people.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires agencies to perform an analysis of the potential impact of regulations on small business entities when regulations are subject to the notice and comment procedures of the APA. As this TFR is not required to be published for notice and comment under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, as this action only directly impacts a small subset of immigrant visa applicants, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act of 1996

In the Department's view, this TFR is not a major rule as defined in 5 U.S.C. 804. This TFR will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

D. Paperwork Reduction Act

This TFR does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 35.

E. Executive Order 12866

The Department has reviewed this TFR to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule will temporarily exempt certain Afghan applicants from the payment of the IV application processing and domestic Affidavit of Support review fees. There are no anticipated costs to the public associated with this rule. The Office of Information and Regulatory Affairs has designated this rule as non-significant.

F. Executive Order 13175

The Department has determined this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

G. Executive Order 13563

Executive Order 13563 directs agencies to assess 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, distributed impacts, and equity effects). The Department has reviewed the TFR under Executive Order 13563 and has determined that this rulemaking is consistent with the guidance therein.

H. Other

The Department has also considered this TFR in light of the Unfunded Mandates Reform Act of 1995 and Executive Orders 12372, 13132, and 13272; and affirms this rule is consistent with the applicable mandates or guidance therein.

List of Subjects

22 CFR Part 22

Fees; Foreign Service; Immigration; Passports and visas.

22 CFR Part 42

Administrative practice and procedure; Aliens; Fees; Foreign officials; Immigration; Passports and visas.

Accordingly, for the reasons stated in the preamble, and under the authority 8 U.S.C. 1104 and 22 U.S.C. 2651(a), 22 CFR parts 22 and 42 are amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. Effective June 1, 2023, through December 31, 2024, § 22.1 is amended by adding Item 32(g) and Item 34(b) to the table to read as follows:

§ 22.1 Schedule of fees.

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
* * * * * * *	
32. Immigrant Visa Application Processing Fee (per person):	
* * * * * * *	
(g) Afghan immediate relative and family preference visa applications	NO FEE.
* * * * * * *	
34. Affidavit of Support Review (only when reviewed domestically)	$120.
* * * * * * *	
(b) Afghan immediate relative and family preference visa applications	NO FEE.
* * * * * * *	

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 108–449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954 (Pub. L. 106–279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111–287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109–162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114–70, 129 Stat. 561).

■ 4. Effective June 1, 2023, through December 31, 2024, § 42.71 is amended by adding paragraph (b)(4) to read as follows:

§ 42.71 Authority to issue visas; visa fees.

* * * * *

(b) * * *

(4) *Exemption from fees for Afghan immediate relative and family preference immigrant visa applicants.* Consular officers shall exempt from immigrant visa fees Afghan applicants

for immediate relative and family preference immigrant visas.

Hugo Rodriguez,

Principal Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2023–11602 Filed 5–31–23; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0226]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce three separate safety zones for three associated fireworks displays at The Wharf DC. The fireworks displays will be on June 3, 2023, June 10, 2023, and June 23, 2023. Our regulation for Fireworks Displays within the Fifth Coast Guard District identifies the safety zone for these events in Washington, DC. During the enforcement period of each safety zone, vessels may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) from 7 p.m. until 11 p.m. on June 3, 2023, from 7 p.m. until 11 p.m. on June 10, 2023, and from 7 p.m. until 11 p.m. on June 23, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *MDNCRMarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for three separate fireworks displays at The Wharf DC from 7 p.m. to 11 p.m. on June 3, 2023, from 7 p.m. to 11 p.m. on June 10, 2023, and from 7 p.m. to 11 p.m. on June 23, 2023. This action is being taken to provide for the safety of life on navigable waterways during these events. Our regulation for Fireworks Displays within the Fifth Coast Guard District, § 165.506, specifies the location of the safety zones for the fireworks shows, which includes portions of the Washington Channel in the Upper Potomac River. During the enforcement period, as reflected in § 165.506(d), if you are the operator of a vessel in the vicinity of the safety zones, you may not enter, remain in, or transit through the safety zones unless authorized to do so by the COTP or his representative, and you must comply with direction from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of these enforcement periods via the Local Notice to Mariners and marine information broadcasts.

Dated: May 24, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2023–11577 Filed 5–31–23; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 2017–8]

Secure Tests

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

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Copyright Office is issuing an interim rule amending its regulations governing the registration of copyright claims in secure tests to continue the current rule that was adopted to address the national emergency caused by the COVID–19 pandemic. The Office has decided to continue allowing otherwise-eligible tests that were administered online during the national emergency to qualify as secure tests, provided the test administrator employs sufficient security measures. The Office is also continuing its procedure allowing examination of secure test claims via secure teleconference. Finally, the Office is requesting public comment whether the interim rule should be made permanent and whether it should restrict examinations of secure test claims to virtual examinations.

DATES: Effective June 1, 2023. Comments must be made in writing and must be received by the U.S. Copyright Office no later than July 3, 2023.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://copyright.gov/rulemaking/securetests.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Suzanne V. Wilson, General Counsel and Associate Register of Copyrights, *svwilson@copyright.gov;* Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, *rkas@copyright.gov;* or David Welkowitz, Attorney Advisor, *dwelkowitz@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 408 of the Copyright Act (the ''Act''), the U.S. Copyright Office is responsible for registering copyright claims.[1] In so doing, the Office is obligated to obtain registration deposits that are sufficient to verify the claims and to provide an archival record of what was examined and registered.[2] During their term of retention, deposits are available through the Office for public inspection.[3] The Act, however, authorizes the Office to issue regulations establishing ''the nature of the copies . . . to be deposited'' in specific classes of works and to ''permit, for particular classes, the deposit of identifying material instead of copies or phonorecords.''[4]

Pursuant to that authority, the Office has long provided special registration procedures for ''secure tests'' that require the maintenance of confidentiality. These include tests ''used in connection with admission to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships, and

[1] 17 U.S.C. 408.

[2] Id. 408(b), 705(a).

[3] Id. 705.

[4] Id. 408(c)(1).

professional certification.'' [5] Current regulations define a secure test as ''a nonmarketed test administered under supervision at specified centers on scheduled dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage or secure electronic storage following each administration.'' [6]

Recognizing the confidential nature of secure tests and that the availability of deposits through public inspection could undercut their utility, the Office has had special procedures for examining secure tests since 1978.[7] In June 2017, the Office issued an interim rule (the ''June 2017 Interim Rule'') that memorialized certain aspects of its secure test examination procedure and adopted new processes to increase the efficiency of the examination of such works.[8] Under this rule, much of which remains operable today, applicants must, among other things, submit an online application, a redacted copy of the entire test, and a brief questionnaire about the test through the electronic registration system.[9] This procedure allows the Office to prescreen an application to determine whether the work appears to be eligible for registration as a secure test. If the test appears to qualify, the Office will schedule an in-person appointment, or, under the current regulations, a secure videoconference,[10] for examination of an unredacted copy.[11]

Under the June 2017 Interim Rule, the examiner will review the redacted and unredacted copies in a secure location or via secure teleconference in the presence of the applicant or the applicant's representative.[12] If the examiner determines that the relevant legal and formal requirements have been met, he or she will register the claim(s) and add an annotation to the certificate reflecting that the work was examined under the secure test procedure. The regulation provides that the registration is effective as of the date that the Office received in proper form the application, questionnaire, filing fee, and the redacted copy that was uploaded to the electronic registration system, rather than the later date when the in-person examination takes place.[13]

On November 13, 2017, in response to concerns raised by stakeholders following the June 2017 Interim Rule, the Office issued a second interim rule (the ''November 2017 Interim Rule'') to permit registration of a group of test items (*i.e.,* sets of questions and answers) stored in a database or test bank and used to create secure tests.[14] For these works, the November 2017 Interim Rule adopted most of the same registration procedures that apply to secure tests under the June 2017 Interim Rule.

On March 13, 2020, the President issued a proclamation declaring the COVID–19 outbreak in the United States a national emergency.[15] In response to the COVID–19 national emergency, the Office issued a third interim rule in May 2020 (the ''May 2020 Interim Rule''), which amended the definition of secure tests to include those tests administered securely online during the national emergency, rather than in person, under certain conditions: (1) the test must otherwise meet the criteria for secure tests; (2) the test must have been administered at specified centers before the COVID–19 emergency; and (3) the administration of the test must be supervised in a manner equivalent to in-person proctoring.[16]

Finally, in February 2021, again in response to the continuing national emergency, the Office issued a fourth interim rule (the ''February 2021 Interim Rule''), permitting the examination of secure test copyright applications by secure videoconference.[17]

II. Current Interim Rule

While the Office is continuing to evaluate the secure tests regulations as a whole to determine if changes may be warranted before issuing a final rule, it is issuing an additional interim rule at this time to address the recent end of the declared national COVID–19 emergency. This interim rule is necessary because the May 2020 Interim Rule specifically limited its scope to a test that ''is being administered online during the national emergency concerning the COVID–19 pandemic.'' [18] On April 10, 2023, the President signed a bill ending the national emergency that had been declared on March 13, 2020.[19]

The Office's experience with the May 2020 Interim Rule has been positive. That rule provided test administrators who previously administered secure tests at specified centers the flexibility to register these works with the secure test accommodation, even if the tests were administered online during the COVID emergency instead of in person. The Office has concluded that these test administrators should have the option to continue to use the secure test accommodation after the end of the declared emergency while the Office evaluates whether, and in what form, to include remotely administered tests permanently in the rule. The Office has not placed a specific time limit on the interim rule because it would like to have sufficient time both to evaluate the use of this rule and to assess how to integrate it into the Office's ongoing modernization of the registration process.

The February 2021 Interim Rule allowing remote examination of secure test claims is not affected by the end of the national COVID–19 emergency. Although that rule was issued in the wake of the pandemic, its language did not limit its use to a time period circumscribed by the pandemic. The Office's experience with the February 2021 Interim Rule has been positive. All secure test applicants have switched to remote examination. This procedure is proving to be more cost effective for applicants and is more efficient for the Office. Therefore, the interim rule does not make any changes to the current process.

The new interim rule maintains a clarifying change related to the storage of secure tests that was implemented in the May 2020 Interim Rule. Prior to that rule, the regulatory language required all copies of a secure test to be ''either destroyed or returned to restricted

[5] 42 FR 59302, 59304 & n.1 (Nov. 16, 1977); *see also* 43 FR 763, 768 (Jan. 4, 1978) (adopting the definition of a secure test).

[6] 37 CFR 202.13(b)(1).

[7] 37 CFR 202.20(b)(4), (c)(2)(vi) (1978); *see* 43 FR at 768–69 (adopting secure test rules).

[8] 82 FR 26850 (June 12, 2017); *see* 37 CFR 202.13, 202.20(b)(3), (c)(2)(vi) (implementing the June 2017 Interim Rule).

[9] 37 CFR 202.13(c)(2).

[10] As discussed below, the Office began using secure videoconferences for examinations in 2021.

[11] Id.

[12] The applicant must bring to the meeting, among other materials, a signed declaration confirming that the redacted copy brought to the meeting is identical to the redacted copy that was uploaded to the electronic registration system. *Id.* 202.13(c)(3)(iv).

[13] 82 FR at 26853.

[14] 82 FR 52224 (Nov. 13, 2017). *See* 37 CFR 202.4(b), (k), 202.13 (2018) (implementing the November 2017 Interim Rule).

[15] Proclamation No. 9994 of March 13, 2020, 85 FR 15337 (March 18, 2020).

[16] 85 FR 27296 (May 8, 2020). *See* 37 CFR 202.13(b)(1) (2020) (implementing the May 2020 Interim Rule). The Office also invited comments ''on the technological requirements needed for examination of secure test claims via secure teleconference.'' The Office received five comments in response. The public comments may be accessed at *https://www.copyright.gov/rulemaking/securetests/.*

[17] 86 FR 10174 (Feb. 19, 2021). *See* 37 CFR 202.13(c)(2) (2021) (implementing the February 2021 Interim Rule).

[18] 37 CFR 202.13(b)(1). The preamble to the May 2020 Interim Rule similarly stated that ''the modification of the definition of secure tests is temporary, lasting only until the COVID–19 emergency ends.'' 85 FR at 27298.

[19] Public Law 118–3 (Apr. 10, 2023). The public health emergency declaration remains in effect until May 11, 2023. *See https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*

locked storage following each administration.'' [20] To make clear that this provision does not preclude the retention of digital copies, the May 2020 Interim Rule provided that copies also may be returned to ''secure electronic storage.'' The new interim rule makes no change to that language.

This interim rule should not be seen as determinative of the final rule in this proceeding, which will be established on the basis of the overall rulemaking record. The Office recognizes, as it has previously, that the ''specified centers'' limitation was a concern for many test publishers even before the COVID–19 emergency, with several commenters to prior interim rules urging the Office to amend that language to facilitate a broader range of testing models.[21] The Office therefore will continue to monitor the operation of the interim rule as it evaluates whether and under what conditions remote testing should be permitted under the final rule addressing secure tests.

In light of the end of the national COVID–19 emergency, and its positive experience with current secure test registration rules, the Copyright Office finds good cause to publish these amendments as an interim rule effective immediately, and without first publishing a notice of proposed rulemaking. The rule merely maintains the status quo and the expiration of the national emergency designation could otherwise create uncertainty related to the status of the procedures in the May 2020 Interim Rule.[22]

III. Request for Comments

The Office invites comments regarding the continuation, modification, or possible expansion of the interim rule, particularly as it relates to online testing. The Office also invites comments on the desirability of eliminating in-person examinations and conducting only remote examinations of secure tests.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Registration.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.13 by revising paragraph (b)(1) to read as follows:

§ 202.13 Secure tests.

* * * * *

(b) * * *

(1) A *secure test* is a nonmarketed test administered under supervision at specified centers on scheduled dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage or secure electronic storage following each administration. A test otherwise meeting the requirements of this paragraph shall be considered a secure test if it was normally administered at specified centers prior to May 8, 2020, but is now being administered online, provided the test administrator employs measures to maintain the security and integrity of the test that it reasonably determines to be substantially equivalent to the security and integrity provided by in-person proctors.

* * * * *

Dated: May 11, 2023.

Shira Perlmutter,

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

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2023–11299 Filed 5–31–23; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 61, and 69

[WC Docket No. 18–155; FCC 23–31; FRS 138334]

Updating the Intercarrier Compensation Regime To Eliminate Access Arbitrage

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) adopts rules to eliminate further exploitation of the access charge system by access-stimulating entities, which ultimately causes IXCs and end-user customers to bear costs for services they don't use.

DATES: The amendments adopted in this document are effective July 3, 2023, except for the additions of § 51.914(d) and (g) at instruction number 3, which are delayed indefinitely. The Commission will publish a document announcing the effective date for § 51.914(d) and (g).

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division via email at *Lynne.Engledow@fcc.gov* or via phone at (202) 418–1540. For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at 202–418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted on April 20, 2023, and released on April 21, 2023. A full-text copy of this document may be obtained at the following internet address: *https://www.fcc.gov/document/fcc-adopts-rules-prevent-gaming-its-access-stimulation-rules.*

Synopsis

1. For over a decade, the Commission has combated abuse of its access charge regime. Such regulatory arbitrage has taken several forms over the years, all of which center around the artificial inflation of the number of telephone calls for which long-distance carriers (interexchange carriers or IXCs) must pay tariffed access charges to the local telephone companies (local exchange carriers or LECs) that terminate the telephone calls to their end users. Some local telephone companies, often in areas of the country with high access charges, partner with high-volume calling service providers, such as ''free'' conference calling or chat line services, to inflate the number of calls terminating to the LEC and, in turn, inflate the amount of access charges the LEC can bill IXCs. This practice is inefficient because it often introduces unnecessary entities or charges into a call flow, perverts the intended purpose of access charges (*i.e.,* to cover the LECs' cost of providing the service), and raises costs for IXCs, and ultimately their customers, whether they use the high-volume calling service or not.

2. Despite multiple orders and investigations making clear the Commission will not tolerate access

[20] 37 CFR 202.13(b)(1).

[21] In response to the May 2020 Interim Rule, two commenters urged the Office to include remote testing in the definition of secure tests beyond the end of the pandemic. Association of Test Publishers Comments at 2 (June 8, 2020); National College Testing Association Comments at 3–6 (June 8, 2020).

[22] H.R. Rep. No. 1980, 79th Cong., 2d Sess. 26 (1946). See 5 U.S.C. 553(b)(3)(B) (notice and comment is not necessary upon agency determination that it would be ''impracticable, unnecessary, or contrary to the public interest''); id. at 553(d)(3) (30-day notice not required where agency finds good cause).

arbitrage, some providers continue to manipulate their call traffic or call flows in attempts to evade our rules. Recently, LECs have inserted Internet Protocol Enabled Service (IPES) Providers into call paths as part of an ongoing effort to evade our rules and to continue to engage in access stimulation. After inserting an IPES Provider into the call flow, the LEC then claims that it is not engaged in access stimulation as currently defined in our rules. The insertion of an additional provider (or providers) into the call flow is inefficient and is aimed at preserving the LEC's ability to charge IXCs terminating switched access charges on access-stimulation traffic—the very practice the Commission found unlawful in 2019.

3. Today, we take additional steps to deter arbitrage of our access charge system. In this Order, we adopt rule revisions to close perceived loopholes in our Access Stimulation Rules that are being exploited by opportunistic access-stimulating entities whose actions ultimately cause IXCs' end-user customers to continue to bear costs for services they do not use.

Background

4. The access charge regime was designed to compensate carriers for use of their networks by other carriers. Interexchange carriers are required to pay LECs for access to their networks, and in the case of calls to customers located in rural areas, IXCs historically had to pay particularly high access charges to rural LECs to terminate those calls. These higher access charges implicitly subsidized rural LECs' networks to help defray the higher costs those LECs incurred in serving less densely populated areas. In 1996, Congress directed the Commission to eliminate implicit subsidies—a process the Commission has pursued by establishing the Universal Service Fund and by steadily moving access charges to a bill-and-keep framework.

5. Some LECs took advantage of technological advances to undermine the Commission's access charge regime by engaging in ''access arbitrage.'' These LECs exploited high access charges in rural areas by artificially stimulating terminating ''call volumes through arrangements with entities that offer high-volume calling services.'' The resulting high call volumes with no requirement that such LECs reduce their tariffed switched access rates ''almost uniformly ma[d]e the LEC's interstate switched access rates unjust and unreasonable under section 201(b) of the Act.''

6. In the 2011 *USF/ICC Transformation Order,* the Commission adopted rules to identify rate-of-return LECs and competitive LECs engaged in access stimulation and required that such LECs lower their tariffed access charges. The rules adopted in 2011 defined ''Access Stimulation'' as occurring when two conditions were satisfied: (1) a rate-of-return LEC or competitive LEC had entered into an access revenue sharing agreement that, ''over the course of the agreement, would directly or indirectly result in a net payment to the other party''; and (2) one of two traffic triggers was met: either ''an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month'' or ''more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.'' At the same time, the Commission began moving many terminating end-office switched access charges to bill-and-keep.

7. Parties that wanted to continue to engage in access stimulation adapted to these rules by interposing Intermediate Access Providers, that arguably were not subject to the access stimulation rules adopted in 2011, into the call flow because many of these providers were still able to charge tariffed tandem switching and transport charges. Interexchange carriers still had to send traffic to LECs serving high-volume calling service providers and pay tariffed tandem switching and transport access charges, that were not transitioning to bill-and-keep, to the terminating LECs or the Intermediate Access Providers the LECs chose. As a result, IXCs and their customers were subsidizing the ''free'' services offered by high-volume calling service providers, whether IXC customers used those services or not.

8. In response to this ongoing arbitrage, the Commission adopted a Notice of Proposed Rulemaking on the subject. The record received in response to the *Access Arbitrage Notice* confirmed that access arbitrage continued even after adoption of the 2011 rules. Therefore, in 2019, the Commission adopted the *Access Arbitrage Order,* broadening the scope of its Access Stimulation Rules by adopting two additional definitions of ''Access Stimulation'' unrelated to the existence of a revenue sharing agreement between parties. Competitive LECs with a terminating-to-originating traffic ratio of at least 6:1, absent a revenue-sharing agreement, and rate-of-return LECs with a terminating-to-originating traffic ratio of at least 10:1, absent a revenue-sharing agreement, would be found to be engaged in access stimulation under the rules adopted in 2019. Most significantly, the Commission also found that requiring ''IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice'' prohibited by section 201(b) of the Communications Act of 1934, as amended (the Act). The Commission addressed this unjust and unreasonable practice by adopting rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and tandem switched transport service access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC's end office or its equivalent. The Court of Appeals for the District of Columbia Circuit upheld the *Access Arbitrage Order.*

9. After the rules adopted in 2019 took effect, parties advised Commission staff that access stimulators had adopted new practices designed to evade the updated rules, primarily by inserting IPES Providers into the call flow. For example, some providers began ''converting traditional CLEC telephone numbers to [IPES] numbers in order to claim that the 2019 [*Access*] *Arbitrage Reform Order* is not applicable'' to the resulting traffic because the calls were bound for telephone numbers obtained by IPES Providers, rather than to LECs serving end users, as required by our rules. LECs and IPES Providers may obtain telephone numbers directly from numbering authorities, indirectly from a LEC partner, or indirectly via a commercial or leasing arrangement. All companies receiving telephone numbers directly from numbering administrators are assigned a unique Operating Company Number (OCN) that identifies the provider associated with each telephone number.

10. In a 2021 enforcement order against competitive LEC Wide Voice, LLC (Wide Voice), we found that Wide Voice ''inserted a VoIP [(Voice over Internet Protocol)] provider into the call path for the sole purpose of avoiding the financial obligations that accompany the Commission's access stimulation rules.'' Then, in July 2022, we adopted a Further Notice of Proposed Rulemaking seeking comment on proposals to prevent companies from leveraging perceived ambiguities in our rules to continue to engage in access arbitrage. In the Further Notice, we sought comment on sample call flows and proposed several definitions relevant to our Access Stimulation Rules, as well as rule revisions making clear ''that an

Intermediate Access Provider shall not charge an IXC tariffed charges for terminating switched access tandem switching and switched access tandem transport for traffic bound to an IPES Provider whose traffic exceeds the [access-stimulation] ratios in §§ 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access Stimulation Rules.''

11. The following diagrams, which were also included in the *Further Notice,* illustrate sample call flows. Diagram 1 represents a call flow that includes both a LEC and an IPES Provider between an Intermediate Access Provider and an end user that is a high-volume calling service provider. Diagram 2 provides an example of a call where the LEC has been removed from the call flow and there is only an IPES Provider between the Intermediate Access Provider and the high-volume calling service provider that is the end-user recipient of the call.

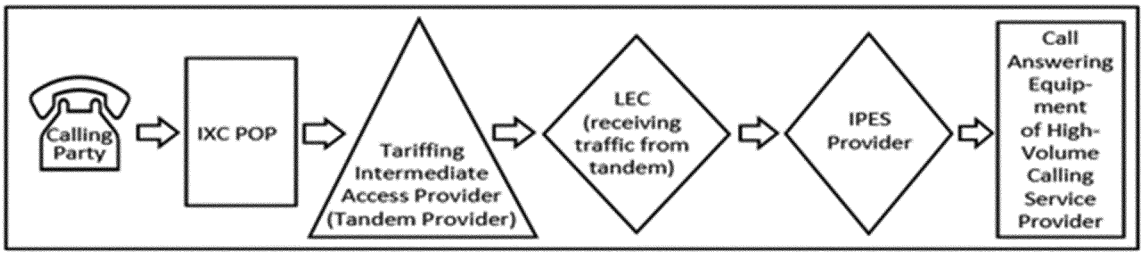


Diagram 1: Showing a hypothetical call path including a LEC and an IPES Provider—to facilitate discussion throughout the remainder of this Order. ''POP'' refers to point of presence.

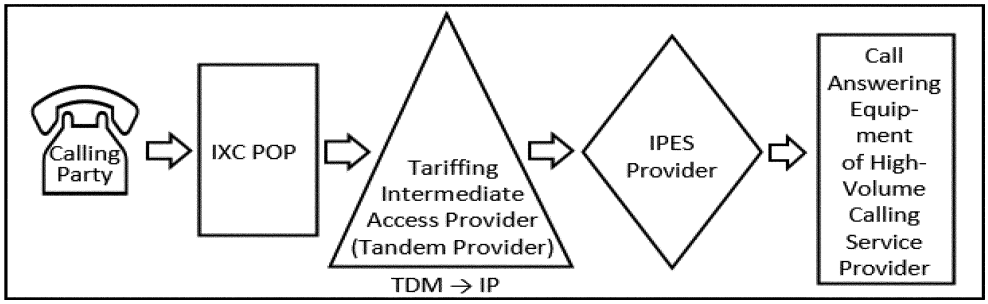


Diagram 2: Showing a hypothetical call path where the Intermediate Access Provider sends traffic directly to the IPES Provider—to facilitate discussion throughout the remainder of this Order. ''TDM (time division multiplexing) to IP'' refers to a transition that occurs during the transfer of a telephone call between the technologies used by the entities involved in the call flow.

12. In response to the *Further Notice,* we received widespread support for further action to stem access arbitrage. USTelecom confirms that, after the reforms adopted in the 2019 *Access Arbitrage Order* became effective, entities manipulated their business models to continue charging IXCs terminating tandem switching and transport access charges for calls delivered to access stimulators. USTelecom suggests that the ''primary difference between the new scheme and the old scheme is not the concept, but the regulatory classification of the entities in the call stream, purposely inserted by arbitrageurs to claim these arrangements are beyond the Commission's reach.'' Verizon agrees that ''access stimulation has not materially decreased, only changed form.'' AT&T explains that its long-distance network now terminates approximately 400 million minutes of use (MOU) to IPES Providers per month, which is ''essentially twice'' the MOU it terminated to IPES Providers prior to the 2019 *Access Arbitrage Order.* Thus, the record strongly suggests that instead of ceasing access-stimulation activity—or taking responsibility for paying certain access charges, as required by our Access Stimulation Rules—some providers chose to exploit a perceived loophole in those rules. Commenters also suggested several revisions to the proposed rule language to further strengthen our Access Stimulation Rules and prevent ongoing arbitrage.

Discussion

13. We are compelled to act again to fight regulatory arbitrage of the Commission's access charge regime. In this Order, we eliminate any perceived ambiguity in our Access Stimulation Rules that results in parties attempting to circumvent those rules simply by inserting IPES Providers into the call path. This practice directly contravenes the Commission's orders, policies, and Access Stimulation Rules. We adopt narrow and focused changes to our rules that are designed to prevent entities from evading responsibility for their access-stimulation activity. The rules and revisions strike an appropriate balance between addressing harmful access-stimulation conduct on the part of certain entities and avoiding negative effects on providers that are not engaged in such activity. We find these rule revisions will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) for the purpose of collecting inflated, tariffed terminating tandem switching and transport access charges from IXCs, thereby artificially increasing costs to IXCs and harming their end-user customers.

A. Limiting the Imposition of Access Charges When IPES Providers Are Engaged in Access Stimulation

14. We find significant support in the record for our proposal to prohibit

Intermediate Access Providers from charging IXCs tariffed terminating tandem switching and transport access charges for traffic bound for IPES Providers engaged in access stimulation as defined in § 61.3(bbb) of our rules. Therefore, we adopt rules providing that, when traffic is delivered to an IPES Provider by a LEC or an Intermediate Access Provider and the terminating-to-originating traffic ratios of the IPES Provider meet or exceed the triggers in the existing Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In this case, ''any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier in a call path and'' an access stimulator is considered an Intermediate Access Provider and shall not impose tariffed terminating tandem switching and transport access charges on IXCs sending traffic to the IPES Provider or the IPES Provider's end-user customer. The Intermediate Access Provider may seek compensation from the IPES Provider for charges the Intermediate Access Provider cannot bill to IXCs. The IPES Provider, if it chooses, may seek reimbursement for these access charges from its end-user customer(s).

15. Commenters widely agree with our proposal to use the same terminating-to-originating traffic ratio triggers for IPES Providers that we currently use for LECs. Thus, we apply to IPES Providers the 3:1 terminating-to-originating traffic ratio plus revenue-sharing agreement trigger in § 61.3(bbb)(1)(i), and the 6:1 terminating-to-originating traffic ratio trigger, absent a revenue-sharing agreement, in § 61.3(bbb)(1)(ii). We find no need, based on the record, to reconsider the existence of revenue-sharing arrangements between parties in the context of our rules. At the same time, we do not apply to IPES Providers the 10:1 terminating-to-originating traffic ratio applicable to rate-of-return carriers. IPES Providers' rates are not subject to rate-of-return regulation and no commenters suggested that their network configurations or call flows are in any way similar to rate-of-return regulated LECs' networks or call flows. No commenter suggested applying the 10:1 ratio to IPES Providers, and no information in the record justifies expanding the applicability of the 10:1 ratio in such a manner.

16. We reject Teliax's unsupported assertion that price-cap incumbent LECs should be subject to the same traffic ratio reporting requirements as competitive LECs, rate-of-return LECs, and IPES Providers. The Commission has previously explained that ''complaints regarding access stimulation activities have not directly involved price cap carriers.'' The record in this proceeding provides no evidence that this has changed. Nor is there any evidence that supports Teliax's assertion that any price-cap LECs are engaged in access stimulation. Even if Teliax's proposal had merit, it is beyond the scope of this current rulemaking as we did not seek comment on expanding our Access Stimulation Rules to encompass price-cap LECs. For these reasons, we lack any basis for expanding our Access Stimulation Rules as Teliax proposed.

17. According to HD Carrier, an IXC or its wireless affiliate has an incentive to send traffic over TDM, and then assert that it does not need to pay access charges by claiming a provider later in the call path is engaged in access stimulation. HD Carrier provides no support for its claims, however. To the contrary, HD Carrier's arguments rely on several incorrect assumptions which we correct here: (a) IXCs cannot unilaterally enter in to interconnection agreements and for that reason, they may still have to use the tariffed, TDM path to terminate traffic; (b) the terminating carrier, not the originating carrier, dictates the call path possibilities at the terminating end of the call, and any Intermediate Access Providers, through call routing instructions detailed in the LERG Routing Guide (LERG); and (c) not all wireless companies have IXC affiliates.

18. The record confirms that the rules we adopt serve the public interest because they are essential to deterring access stimulation. These new rules, similar to those adopted in the *Access Arbitrage Order,* will prohibit Intermediate Access Providers and LECs from requiring IXCs to pay tandem switching and tandem transport charges for access-stimulation traffic that the Commission has found to be unjust and unreasonable in violation of section 201(b) of the Act. Under the rules we adopt, an IPES Provider will be responsible for calculating its traffic ratios at each end office or end office equivalent and providing the required notifications of access-stimulation activity to the Commission and affected entities. These rules are consistent with other public interest requirements imposed on VoIP providers, such as universal service, E911, and other reporting obligations.

19. Some commenters ask us to go a step further, and not only apply the access-stimulation triggers and notification requirements to IPES Providers, but also impose on IPES Providers the same financial responsibility for access-stimulation traffic as LECs have under the current rules. Bandwidth, for example, proposes that, ''[r]ather than stating an IPES Provider 'may' pay for terminating switched access tandem switching and terminating switched access tandem transport services where the IPES Provider is engaged in access stimulation, the rule should *require* the IPES Provider . . . to assume financial responsibility for the services.''

20. Although our Access Stimulation Rules require access-stimulating LECs to assume financial responsibility for tandem services used to deliver access-stimulation traffic, as proposed in the *Further Notice,* we decline to impose the same mandatory condition on access-stimulating IPES Providers. Instead, the IPES Provider ''may'' assume financial responsibility. We do, however, make clear that IXCs shall not be billed by Intermediate Access Providers for terminating tandem and transport charges to deliver traffic to an IPES Provider engaged in access stimulation. Under the rules we adopt here, an Intermediate Access Provider will have an option and may seek compensation from an access-stimulating IPES Provider, or it shall seek compensation from the IPES Provider's LEC partner (if that LEC had directly assigned numbers that it transferred to the IPES Provider that then used those numbers to receive access-stimulated traffic) for the tariffed terminating tandem switching and transport access charges related to traffic bound for an IPES Provider engaged in access stimulation. In short, Intermediate Access Providers, LECs, and IPES Providers may determine their own billing arrangements among themselves when an IPES Provider is engaged in access stimulation but tariffed terminating switched access charges may not be imposed on IXCs in those situations. We find that this approach recognizes the difference in regulatory treatment between LECs and IPES Providers while also advancing our goal of curbing access stimulation. And under this approach, if access is being stimulated and an IXC is unlawfully charged for tariffed terminating tandem switching or transport, the IXC may file a complaint against the LEC if the stimulated traffic is being sent to numbers that were directly assigned to the LEC, or it may bring a court action against the IPES Provider if the stimulated traffic is being sent to numbers that were directly assigned to the IPES Provider.

21. In addition, we decline Bandwidth's request to expand the Access Stimulation Rules to ''require [a]ccess [s]timulators to pay any tariffed charges associated with stimulated originating and terminating traffic.'' Bandwidth suggests that its proposal would prevent access-stimulating entities from charging any originating access charges and would make them, instead of IXCs, financially responsible for all tandem service charges—including dedicated tandem charges—for both terminating and originating traffic heading to or from access stimulators and argues that not incorporating its proposal would create a loophole in our Access Stimulation Rules.

22. As AT&T acknowledges, however, we did not seek comment on expanding the current Access Stimulation Rules to encompass originating traffic or dedicated tandem service charges. Although Bandwidth correctly points out that the *Further Notice* included certain questions regarding originating 8YY traffic, we only asked about ''issues regarding the treatment of originating 8YY traffic for purposes of calculating the traffic ratios related to the triggers in our Access Stimulation Rules.'' Those questions were focused on whether we needed to refine the existing methodology for calculating traffic ratios used to determine whether an entity is engaged in terminating access stimulation. They were not designed to elicit comments about potential reforms to our originating access or 8YY access charge rules, and we thus lack a full record on which to consider such reforms. Indeed, any changes to our rules governing originating traffic would have far-reaching implications that are best addressed in other docketed proceedings, such as the 8YY Access Charge Reform and Intercarrier Compensation reform dockets.

23. Bandwidth and AT&T also raised concerns about the potential practice of carriers imposing additional, improper access charges on IXCs to make up for tandem switching and switched access transport revenue which terminating carriers lost as a result of the rules adopted in the *Access Arbitrage Order* and the *8YY Access Charge Reform Order.* To the extent there are any concerns that providers may be imposing charges for terminating switched access tandem switching or terminating switched access transport services that are precluded by our Access Stimulation Rules, we find that our existing rules adequately address that issue. The definition of ''tandem-switched transport and tandem charge'' in § 69.111 of our rules includes charges for the following services: tandem switched transport facility, common transport multiplexing, tandem switched transport termination, and tandem switching. Thus, pursuant to our Access Stimulation Rules, Intermediate Access Providers and LECs are not permitted to charge IXCs tariffed rates for any of those four rate elements or services, if the LEC (under either the current rules or the new and revised rules) or the IPES Provider (under the new and revised rules) is engaged in access stimulation. Our rules apply to access-stimulating entities that provide tariffed services with rate elements that are equivalent to those described here, even if they are offered under different names. We will scrutinize any tariff modifications filed by LECs or Intermediate Access Providers that improperly attempt to shift recovery of precluded terminating switched access tandem switching or terminating switched access transport costs to other charges in a provider's tariff. We will also be vigilant in looking for any attempts carriers may make to impose tariffed charges for functions they do not actually perform.

24. *Definition of ''End Office Equivalent.''* We adopt our proposal that IPES Providers be required to calculate their traffic ratios in each end office or equivalent at which they receive traffic for purposes of determining whether they meet or exceed the traffic ratios in our Access Stimulation Rules. Contrary to claims in the record, this is consistent with how the Access Stimulation Rules have been applied. First, however, we dispel concerns in the record that IPES Providers may attempt to evade responsibility for calculating their traffic ratios by claiming their traffic should not be counted because it does not transit an ''end office or equivalent,'' as the present rules require.

25. To make clear how providers' traffic ratio calculations should be made, we adopt two new rules. We add a definition of ''End Office Equivalent'' to our rules to ensure that our Access Stimulation Rules are specifically applicable to IPES Providers that do not have a traditional ''end office,'' as well as to LECs that do have an ''end office.'' We also adopt a rule that clarifies the methodology that IPES Providers and other providers are required to use in calculating their access-stimulation traffic ratios.

26. The term ''end office'' is already defined in our rules and is a common term used to mean ''the telephone company office from which the end user receives exchange service.'' We now adopt a new term, ''End Office Equivalent,'' as § 61.3(fff), solely for purposes of our Access Stimulation Rules, which is defined as follows:

> *End Office Equivalent.* For purposes of this part and §§ 51.914, 69.3(e)(12)(iv), and 69.4(l) of this chapter, an End Office Equivalent is the geographic location where traffic is delivered to an IPES Provider for delivery to an end user. This location shall be used as the terminating location for purposes of calculating terminating-to-originating traffic ratios, as provided in this section. For purposes of the Access Stimulation Rules, the term ''equivalent'' in the phrase ''end office or equivalent'' means End Office Equivalent.

27. AT&T expresses concern that arbitrageurs might ''claim[] that certain IP terminating arrangements do not transit an end office 'equivalent' at all.'' In response, Bandwidth argues that IPES Providers with authority to receive direct numbering assignments do, in fact, have an end office equivalent in which they can determine their terminating-to-originating traffic ratios for purposes of our Access Stimulation Rules. The new definition we adopt requires a geographic location. In addition, as Bandwidth suggests, a possible geographic location for an ''End Office Equivalent'' applicable to IPES Providers could be a switch POI (point of interconnection) CLLI (Common Language Location Identifier). Bandwidth explains that both an end office and switch POI CLLI are associated with a geographic rate center making the switch POI CLLI the equivalent of an end office. We do not specify that an IPES Provider must use a switch POI CLLI as the geographic location of termination for the calculation of traffic ratios, but the definition of ''End Office Equivalent'' we adopt acknowledges that every IPES Provider has one or more End Office Equivalent locations and that each one shall be used as a terminating location for purposes of calculating traffic ratios under our Access Stimulation Rules. Therefore, the definition of ''End Office Equivalent'' makes clear that, for purposes of our Access Stimulation Rules, the definition of ''Access Stimulation'' in § 61.3(bbb) unquestionably applies to IPES Providers.

28. *Calculating Traffic Ratios.* We also adopt a rule that incorporates our proposal that IPES Providers be required to calculate their terminating-to-originating traffic ratios and provides the methodology for how such traffic ratios should be calculated for purposes of our Access Stimulation Rules. Most commenters agree that the IPES Provider is in the best position to calculate its own traffic ratios, because it ''necessarily has visibility into its own

access traffic,'' is ''the entity that chooses how it will send or receive its traffic,'' and tracks its calls for billing purposes. Accordingly, we decline to adopt our alternative proposal that would have required Intermediate Access Providers to calculate IPES Providers' traffic ratios. We agree with commenters that such a requirement would unduly burden Intermediate Access Providers and is unworkable because Intermediate Access Providers do not possess the information needed to compute the relevant traffic ratios. We find that requiring IPES Providers to count their own traffic for purposes of the access-stimulation triggers is necessary to thwart the latest efforts to evade our Access Stimulation Rules by inserting IPES Providers into the call flow. As a result of the actions we take today, entities will no longer be able to ''claim that the [*Access Arbitrage Order*] is inapplicable because the traffic is bound for telephone numbers obtained by IPES Providers and not bound for LECs serving end users.''

29. At the same time, in response to concerns raised in the comments, it is important for us to provide a clear methodology of how IPES Providers and LECs should calculate their terminating-to-originating traffic ratios. Otherwise, there may be confusion that could lead to the miscalculation of traffic ratios, disputes between providers, or potential new arbitrage opportunities. Above we detail *where* traffic should be calculated (for LECs at each of their end offices, and for IPES Providers at each of their ''End Office Equivalents'') for purposes of our Access Stimulation Rules. Here we detail *how* a LEC or IPES Provider must calculate its traffic ratios; that is, based on MOU to and from telephone numbers directly assigned to that LEC or IPES Provider, respectively. Presently, certain commenters explain, when an Intermediate Access Provider delivers traffic to an IPES Provider (for delivery to telephone numbers leased or bought by the IPES Provider from a LEC that then indirectly assigns those numbers to the IPES Provider), those calls are still counted in the LEC's traffic ratios because LECs calculate their ratios on traffic to and from telephone numbers directly assigned to their OCNs, including when a LEC provides those telephone numbers to another entity via indirect assignment.

30. Given the ongoing attempts by some entities to misapply or exploit perceived loopholes in our current Access Stimulation Rules and concerns expressed in the record, we agree that we must specify how carriers calculate their traffic ratios for purposes of our Access Stimulation Rules. Accordingly, we adopt a new rule, consistent with how LECs in the industry already count traffic, for compliance with our Access Stimulation Rules, requiring each competitive LEC, rate-of-return LEC, or IPES Provider to include in its terminating-to-originating traffic ratio, to be counted separately at each end office or End Office Equivalent, all traffic ''going to and from any telephone number associated with an Operating Company Number that has been issued'' to such LEC or IPES Provider. Under this rule, IPES Providers will be required to include in their traffic ratios all calls made to and from telephone numbers they receive directly from a numbering administrator, but not calls made to and from telephone numbers obtained indirectly from a LEC.

31. Similarly, in the case where one LEC supplies another LEC with telephone numbers (indirectly assigning numbers to the second LEC), the first LEC that was directly assigned the telephone numbers by a numbering administrator is required to calculate its ratios by counting the calls to and from those directly assigned telephone numbers, even though that first LEC has assigned those telephone numbers to a second LEC. The clarity this rule provides will prevent confusion and potential double-counting of calls—once by the LEC that was assigned the numbers directly and again by the IPES Provider, or LEC, that received those numbers indirectly from a LEC.

32. We also reject other methods for calculating traffic, particularly by state, specific end user, or Intermediate Access Provider, or some other manner, instead of at the end office or End Office Equivalent. There was some discussion in the record about calculating traffic ratios at the state level. Calculating traffic ratios at the state level would make traffic manipulation easier—a result or potential loophole we do not want to allow. Several other parties suggested alternative ways to calculate traffic, such as at the network or aggregate level. None of these parties provided sufficient support for these suggestions, however, and we find these proposals would allow for even easier traffic manipulation contrary to our goal of deterring access stimulation. For example, if traffic were counted in the aggregate, as some parties suggest, access-stimulating LECs or IPES Providers could send terminating traffic to one or a few end offices, or End Office Equivalents, of an unrelated LEC or IPES Provider such that the original LEC's or IPES Provider's ratios over the totality of their network, would not meet or exceed the traffic ratio triggers in the rules, meaning IXCs would have to pay for all terminating access charges even though if the traffic had not been shifted the traffic ratio triggers would have been met. Under our new rules, traffic ratio calculations must be made at each end office or End Office Equivalent for telephone numbers directly assigned to the provider's OCN. As under the current rules applicable to LECs, if an IPES Provider is deemed to be engaged in access stimulation because it meets or exceeds the traffic ratio triggers in an End Office Equivalent, then it must comply with the Access Stimulation Rules and IXCs would not be charged for terminating tandem switching or transport. This takes into account the possibility that entities have more than one end office or End Office Equivalent and will discourage traffic manipulation, whether between end offices or End Office Equivalents of the same provider, or between different companies' end offices or End Office Equivalents, to stay under the traffic ratio triggers.

33. We find that the methodology we adopt—calculating a provider's traffic ratios at each end office or End Office Equivalent based on calls to and from telephone numbers assigned to that provider's OCN—provides a simple-to-administer, bright-line test that eliminates confusion in determining which entity is responsible for counting traffic and will deter potential future access-stimulation arbitrage. Counting traffic based on which entity is assigned a particular telephone number not only identifies the responsible entity, it also ensures that all calls are accounted for in calculating the access-stimulation traffic ratios and that no calls are double-counted. In addition, even though the networks of IPES Providers and LECs may route traffic differently, the common denominator of our methodology is that providers have a bright-line test for calculating ratios on the basis of calls routed to and from telephone numbers associated with an end office or equivalent and an OCN that identifies that provider.

34. We conclude that the benefits of this methodology overcome any potential risks it may pose to a LEC that sells or leases telephone numbers to IPES Providers or to other LECs. It is true that, under new § 61.3(bbb)(5), a LEC, for example, is held responsible if it has directly assigned numbers that it then indirectly assigns to an IPES Provider that uses those telephone numbers it receives from that LEC to stimulate traffic, even though the LEC may have limited visibility into, or control over, the IPES Provider's traffic flow. The relationship by which a LEC indirectly assigns numbers to an IPES

Provider, however, is a business arrangement that the parties enter into voluntarily. As such, each party can contractually protect itself from the possibility that one of them may engage in access stimulation and can, for example, require that each party hold the other harmless from any financial responsibility for such activities and expressly provide that such numbers will not be used to violate our Access Stimulation Rules. Under the new rule we adopt today, LECs ''would have a strong incentive to take corrective steps to avoid being deemed an access stimulator—up to and including ending the relationship with the stimulating customer.'' Indeed, competitive LECs took such steps to terminate their agreements with providers shortly after the Commission adopted rules in 2019 to make access-stimulating LECs, rather than IXCs, financially responsible for tandem switching and transport service access charges in the delivery of traffic.

35. In cases where an IPES Provider obtains telephone numbers from a LEC, the LEC that indirectly assigns numbers to the IPES Provider will include calls to those numbers in the LEC's own ratio calculations. Thus, IXCs can easily ascertain from LERG databases, available to the public, which telephone numbers are assigned to which provider (the LEC or the IPES Provider) to evaluate the traffic ratios based on the OCN associated with any particular group of telephone numbers. Otherwise, as Inteliquent explains, IXCs:

> will have no visibility into the identity of this provider or providers because the associated traffic will not be assigned to the provider(s) OCNs in the LERG. Without a public record demonstrating which phone numbers belong to the provider, the interexchange carrier[s] will have no visibility as to their inbound or outbound traffic, meaning that there will be no independent or objective way to evaluate the traffic ratios of the party using numbers supplied to it by a LEC.

Without the use of public databases, it would be easier for a LEC, possibly one that is presently deemed an access stimulator under the current rules, to evade responsibility for stimulated traffic by claiming the traffic is the responsibility of the other provider.

36. To conclude, our new rule 61.3(bbb)(5) makes explicit that a competitive LEC, rate-of-return LEC, or an IPES Provider is required to calculate its traffic ratios on calls that traverse its end office or End Office Equivalent and go to and from telephone numbers directly assigned to that provider's OCN. And if that LEC or IPES Provider meets or exceeds the relevant traffic ratio trigger, then an IXC shall not be charged terminating access charges for the delivery of that traffic. Thus, the addition of this rule will minimize providers' ability to skirt responsibility for access stimulation.

37. *Notification Requirements.* We next amend our rules to require that an IPES Provider notify Intermediate Access Providers, IXCs, and the Commission if it is engaged in access stimulation as defined in our revised rules, similar to the obligations that already apply to LECs. An IPES Provider engaged in access stimulation as defined in § 61.3(bbb)(1)(i) and (ii) of our rules shall satisfy its notice and reporting requirement to the Commission by filing a record of its access-stimulating status in WC Docket No. 18–155 on the same day that it issues such notice to affected IXCs and Intermediate Access Providers. We find that these requirements are necessary to enable Intermediate Access Providers to determine whether they can lawfully charge IXCs tariffed rates for interstate and intrastate terminating tandem services in connection with calls terminating to, or through, an IPES Provider, and to help IXCs determine if the charges are appropriate.

38. We disagree with Bandwidth's proposal to change the present notice and reporting requirements. Bandwidth suggests that a ''more prominent, public disclosure'' is necessary, and that the Commission should publish public filings in its Daily Digest to ''provide all IXCs (and consumers) with notice of where access stimulation occurs.'' The Commission has already established a disclosure requirement that is both well understood by the industry and available to the public through the Commission's Electronic Comment Filing System. There is no indication that the present filing procedure is insufficient for providing effective notice of access-stimulation activity to all affected or interested parties.

39. We take seriously concerns that IXCs may be using improper self-help to withhold payment for services they have obtained pursuant to tariffs. We caution IXCs against improperly using our rules to engage in the wrongful withholding of payments. We continue to discourage providers from engaging in self-help except to the extent that such self-help is consistent with the Act, our rules, and applicable tariffs. Moreover, we would expect and encourage any IXC with evidence of unlawful conduct on the part of a LEC or Intermediate Access Provider to bring a complaint proceeding under section 208 of the Act for damages to deter such conduct in the future.

40. We decline to adopt Verizon's proposal that we add a rule defining the financial liability of an IPES Provider that engages in access stimulation but fails to provide timely notice of that activity to affected parties. Verizon requests that we amend § 51.914 of our rules ''to make clear that, where an IPES [P]rovider does not timely self-identify and the Commission or a court later holds that the IPES [P]rovider should have self-identified . . . the obligation to bear tandem switching and transport charges applies retroactively to when the IPES [P]rovider should have self-identified'' and that the IPES Provider ''must then reimburse long-distance carriers for any amounts improperly billed.'' We find that such a rule is unnecessary to achieve its intended purpose.

41. Under the rules we adopt today, an IPES Provider that meets or exceeds the access-stimulation triggers but fails to provide the proper notice would violate our rules. If a LEC or an IPES Provider is engaged in access stimulation and fails to notify the Intermediate Access Provider or IXC, for whatever reason, an IXC's recourse is against the LEC or IPES Provider, not the Intermediate Access Provider. Our rules and the Act permit an IXC to bring proceedings before the Commission or the courts and recover full damages, including any retroactive damages, if the IXC is improperly billed by another carrier. Complaints involving IPES Providers, which are not common carriers, may be brought in the courts for adjudication.

42. The determination of liability and the award of specific damages involving access-stimulation traffic is a fact-intensive inquiry requiring analysis of the functions of multiple carriers in transmitting, and billing for, calls in a particular call path. Thus, the Commission or a court, in an adjudicatory proceeding, is best suited to determine issues of liability and damages, including whether, based on the facts at hand, ''the obligation to bear tandem switching and transport charges applies retroactively to when the IPES [P]rovider should have self-identified.'' Indeed, Verizon's proposed rule could have the unintended effect of inappropriately pre-judging liability and damages.

43. *When an IPES Provider Is No Longer Engaged in Access Stimulation.* We received no comments regarding our proposal that IPES Providers conform to the same requirements as LECs for determining when an IPES Provider that was engaged in access stimulation is no longer deemed to be engaged in access stimulation. Thus, we adopt our proposal to extend those same requirements to IPES Providers.

Accordingly, if an IPES Provider has an access charge revenue-sharing agreement and is engaged in access stimulation because it meets or exceeds the 3:1 interstate terminating-to-originating traffic ratio at an end office or equivalent in a calendar month, as described in § 61.3(bbb)(1)(i) of our rules, it would no longer be deemed to be engaged in access stimulation if it terminates all revenue sharing agreements and its traffic ratio is below 6:1. In the case of an IPES Provider that has no revenue-sharing agreement and is engaged in access stimulation because it meets or exceeds the 6:1 traffic ratio established by § 61.3(bbb)(1)(ii) of our rules, it would no longer be deemed to be engaged in access stimulation if its traffic ratio falls below 6:1 for six consecutive months, similar to the current rule applicable to competitive LECs. Additionally, once an IPES Provider terminates its engagement in access stimulation, it would be required to notify the Commission and any affected Intermediate Access Providers and IXCs of its changed status, similar to the current rule applicable to LECs.

44. *Implementation and Effective Dates.* In the *Further Notice,* we proposed that providers should be required to comply with the new and revised rules adopted in this Order within 45 days following their effective date. This is the same timeframe that the Commission found to be reasonable when it adopted the current Access Stimulation Rules. We asked parties if this timeframe posed any challenges or difficulties. We did not receive any comments in response and have no reason to believe this timeframe is insufficient, as there have been no complaints about this timeframe since it was first adopted for the existing rules. Thus, we give providers 45 days to come into compliance with our new and revised rules once they become effective. The effective date of the rules that do not require Paperwork Reduction Act (PRA) review is 30 days after publication in the **Federal Register**. Several of the rules we adopt may require Office of Management and Budget (OMB) review pursuant to the PRA. A separate notice will be published in the **Federal Register** detailing the effective dates and compliance dates for those rules.

B. Declining To Adopt Commenters' Proposals That Are Unnecessary or Insufficiently Supported

45. Commenters submitted several additional proposals not addressed in the *Further Notice* that, for the reasons discussed below, we decline to adopt. We find that these proposals are duplicative of our existing processes, lack sufficient support in the record to allow us to adopt them, or have already been rejected by the Commission.

46. *Formally Establish a Rebuttable Presumption and an Access-Stimulation Specific Complaint Process.* We received several comments requesting clarification of, or changes to, our current informal and formal complaint processes targeted to access stimulation. Because these suggestions do not materially differ from our current enforcement processes, and are moot with regard to IPES Providers because our § 208 complaint process does not apply to IPES Providers, we reject them as duplicative and unnecessary.

47. Several commenters request that we make clear that the rebuttable presumption process outlined in the *USF/ICC Transformation* Order applies to IPES Providers. These commenters explain that IXCs lack access to access stimulators' (and their partners') traffic and call routing information. Therefore, these commenters argue that a complaining carrier should be permitted to rely on its own internal data to show that an IPES Provider's traffic with the complaining carrier meets or exceeds the access-stimulation triggers, shifting the burden to the IPES Provider or its LEC partner to rebut the presumption with its own traffic data. These parties propose that if the LEC or IPES Provider is unable to rebut this presumption, or chooses not to provide data, then Intermediate Access Providers or LECs could not charge IXCs for terminating tandem switching and transport service for the delivery of traffic to that LEC or IPES Provider.

48. We confirm that IXCs remain able to initiate a complaint with the Commission by using their traffic data to assert that a LEC is engaged in access stimulation, with the burden then shifting to the LEC to use its traffic data to confirm or refute the IXC's allegations, and that this process will remain in place after this Order takes effect. A complaining IXC may rely on its own data, for example data calculated at a LEC or IPES Provider's company-wide level, about the traffic it exchanges as the basis for filing a complaint or a court action. Lumen and USTelecom provide examples of information that may be used to support (for example, traffic ratio data calculated at the company-wide level rather than in an end office or equivalent) or rebut (for example, showing that traffic associated with certain telephone numbers should be attributed to an IPES Provider rather than the LEC) a claim of access stimulation. We do not dictate the type or amount of information that may be effective to support or rebut an IXC's claim of access stimulation and acknowledge that a court will manage any complaints presented before it as it deems appropriate. The LEC (or IPES Provider) would then have the burden of showing that it is not engaged in access stimulation by providing the necessary traffic data rebutting the IXC's allegation. We rely on the industry to self-police this issue, and we find that our current complaint processes or appropriate court proceedings have been effective in addressing violations of our Access Stimulation Rules. We also expect that the rule we adopt today detailing how LECs and IPES Providers are to calculate their traffic ratios will, by use of publicly available information, provide greater transparency into entities' traffic ratios which will help resolve disputes about whether an entity is engaged in access stimulation. To the extent commenters request that our enforcement process be extended to IPES Providers, IPES Providers are not subject to complaints made pursuant to section 208 of the Act because IPES Providers are not common carriers under Title II of the Act. We therefore must decline proposals to extend our enforcement process to IPES Providers.

49. Verizon offers a similar proposal for streamlining the process for bringing access-stimulation complaints, calling for us to establish a new ''hybrid informal-formal'' complaint process ''to lower the [transaction] costs'' for identifying access stimulators. Verizon proposes that we modify our complaint processes to allow an IXC to initiate a complaint by presenting sufficient evidence that an alleged access stimulator (LEC or IPES Provider) meets or exceeds the traffic ratios in our rules. Unlike the current enforcement rules, Verizon proposes that the primary burden of producing data would be on the entity alleged to be engaged in access stimulation, and that an alleged access stimulator could meet that burden by, for example, submitting to the Commission its complete switched access call detail records. Under this proposal, the responding LEC or IPES Provider would also be required to provide ''a certification that the records are complete and accurate.'' Then the Commission could conduct an independent evaluation of the traffic data. According to Verizon, the Commission's evaluation would enable the filing of a formal complaint if the alleged access stimulator refuses to self-identify as an access stimulator regardless of what the call detail records indicate.

50. We decline to adopt Verizon's proposal to create a new ''hybrid''

process to adjudicate an IXC's claims of access stimulation. Verizon's proposal does not differ appreciably from our already-established informal and formal complaint processes as applied to Title II carriers. For example, as AT&T acknowledges, our rules currently require written responses to informal complaints. Although Verizon proposes mandating that parties certify that their records are complete and accurate, our rules already require parties to respond to discovery requests fully in writing under oath or affirmation. Likewise, Verizon's proposal that discovery be subjected to an ''independent evaluation'' is currently required by section 208(a) of the Act, which confirms that it is ''the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'' Thus, we find that Verizon's proposal is already substantially captured by our current enforcement rules and processes. For these reasons, we reject proposals that we create a special process to resolve access-stimulation complaints.

51. *No Direct Connection Mandate or § 61.26(f) Clarification.* We next reject Lumen's proposal that we ''should mandate that VoIP provider applicants for direct access [to numbers] certify that their CLEC partners will allow IXCs to have direct connection in terminating switched access routing.'' Aureon opposes this proposal, noting that it is outside the scope of this proceeding, and that the Commission has already considered and rejected Lumen's proposal. It also explains that Lumen's proposal would be ineffective, and cautions that direct connections would result in access stimulators moving their traffic, leading to stranded costs for LECs and IXCs.

52. We also reject Lumen's request that we clarify the applicability of § 61.26(f) of our rules, which addresses the rates a competitive LEC may charge for switched exchange access services, because, according to Lumen, there is a ''lack of uniformity in the industry when it comes to the billing capability afforded'' by that rule. Lumen suggests that this issue is directly within the scope of the *Further Notice.* AT&T argues that such a clarification would be contrary to the Commission's goal of transitioning to bill-and-keep by expanding ''situations in which access charges could be billed.''

53. Lumen's proposals are outside the scope of this proceeding, and we therefore decline to consider them here. We emphasize, however, that the Commission has previously rejected suggestions to mandate direct connections, and note that Lumen has not provided good reason for us to reconsider that decision. Likewise, any requirement for direct connection would be counter to the Commission's long-standing policy that parties determine their best means of interconnection. Furthermore, we disagree with Lumen's suggestion that § 61.26(f) of our rules is unclear or needs modification. Even if we agreed with Lumen, we find that its arguments are better addressed in our existing proceeding on direct access to numbers, not in the context of addressing the access stimulation of terminating switched tandem and transport charges, and we note that Lumen has already made similar arguments in the Direct Access to Numbers proceeding.

54. HD Carrier suggests that we ''provide an 'access-stimulating' IPES the option to offer to connect directly in IP on a bill-and-keep basis to the originating service provider to avoid the shifting of financial responsibility that may otherwise occur under [the Commission's Access Stimulation Rules] if the IPES exceeded certain traffic ratios.'' Wide Voice agrees that we have ''other tools at [our] disposal, such as IP reciprocal, bill and keep interconnection arrangements to stomp out the so-called abuse of access charges.'' As discussed here, the Commission has not, and we do not now, mandate how entities interconnect for the exchange of traffic—in IP or TDM. If parties wish to enter into contractual agreements for the exchange of traffic using IP technology at mutually beneficial terms, perhaps bill-and-keep, they have been, and remain, free to do that; *i.e.,* they have the ''option'' to do so. No action we take in this Order affects that ability. Consistent with precedent, we expressly limit the requirements of IPES Providers, adopted in this Order, to measures targeted to address the arbitrage of terminating tandem switching and transport switched access charges.

55. *We Do Not Require IPES Providers with Direct Access to Numbers to Certify They Will Not Use Numbering Resources to Evade or Violate Our Access Stimulation Rules.* We reject proposals that we require IPES Providers with direct access to numbers to certify annually that they will not use numbering resources to evade the Access Stimulation Rules. We have already sought comment on this issue in our Direct Access to Numbers proceeding. The Direct Access to Numbers docket is a separate proceeding with a separate record. To make a decision on this proposal here would introduce confusion and unnecessarily complicate the Direct Access to Numbers proceeding. Additionally, we received a more comprehensive record on the certification proposal in the Direct Access to Numbers proceeding where related questions were asked and discussed. We therefore decline to adopt an annual certification requirement here and leave any final decision on that issue for the Direct Access to Numbers proceeding.

56. *Proposals for Which the Commission Has Already Provided a Decision.* In its comments, Inteliquent describes an arbitrage practice whereby calls routed to a LEC or an IPES Provider are blocked or otherwise rejected when transmitted via a regulated path to the high-volume calling service provider served by the terminating LEC or IPES Provider. Inteliquent claims that when the calls are rerouted through unregulated providers, they are completed. Inteliquent asks that we address this issue by clarifying that ''traffic will be attributed to the [traffic ratios of the] terminating IPES Provider or LEC whenever an IXC attempts to deliver that traffic over the path specified by the IPES Provider/LEC in the LERG, but the call is rejected over that path,'' so the IPES Provider/LEC is not able ''to escape designation as an access stimulating provider'' by diverting some traffic over an unregulated path. We decline to act as Inteliquent requests because traffic traversing the non-regulated path is outside the scope of our Access Stimulation Rules, which are tied to tariffed services. Also, the Commission has already explicitly explained that, in the case of traffic destined for an access-stimulating LEC, an IXC or Intermediate Access Provider may consider its call completion duties satisfied once it has delivered the call to the tandem. For similar reasons, such a limitation on the scope of call completion duties would be reasonable to apply to traffic destined for an access-stimulating IPES Provider in the calling scenario Inteliquent describes.

57. Teliax questions whether ''[a] ratio alone could prove to be overly inclusive by encompassing LECs that had realized access traffic growth through general economic development—as well as changes in technology and markets.'' On the other hand, AT&T and Verizon express concerns that because the traffic ratio triggers are bright-line rules, then ''traditionally those 'triggers are necessarily under-inclusive.' '' We have seen no evidence in the industry that our ratios are not working as intended, nor, as discussed, is there evidence in the record to support establishing

different traffic ratios to apply to IPES Providers than those in the existing rules. Indeed, the Commission purposely decided to err on the side of caution and adopted conservative triggers in an effort to avoid the chance that a company might be wrongly identified as engaging in access-stimulation activity. Further, as is already the case with LECs, if an IPES Provider, ''not engaged in arbitrage, finds that its traffic will meet or exceed a prescribed terminating-to-originating traffic ratio,'' the provider may request a waiver and demonstrate special circumstances that warrant a deviation from our rules. The traffic ratios in § 61.3(bbb) of our rules are the bright-line tests the Commission has established for determining when an entity is engaged in access stimulation and for enforcing our rules to prevent it. We do not expect our rules to capture any entities that are not actively engaged in access stimulation. But we do expect that the rules adopted today will capture additional entities engaged in access stimulation, strengthen our existing rules, close perceived loopholes, and enhance the overall enforceability of our Access Stimulation Rules.

C. Adopting Additional Rule Revisions

1. Definition of ''IPES Provider''

58. To implement the rules adopted in this Order, we add a definition of ''IPES Provider'' in § 61.3(eee) that applies only in the context of the Access Stimulation Rules. In the *Further Notice,* we proposed a definition of ''IPES Provider'' based on the existing definition of ''Interconnected VoIP service'' in our rules, but we make changes to that proposed definition, based on comments we received in the record.

59. First, we remove the proposed requirement that an IPES Provider support real-time, ''two-way voice'' communications. We sought comment on USTelecom's proposal to remove ''two-way voice'' from the definition of ''IPES Provider'' in the *Further Notice,* and several commenters supported this modification, arguing that the definition should be broader. For example, Verizon discusses a ''call-to-listen'' service, whereby a user can make a long-distance telephone call to listen to a radio station. Verizon explains that a ''call-to-listen'' service uses only a simplex channel—''one that sends voice communications in one direction (to the listener).'' Verizon argues that such services should be covered by our Access Stimulation Rules, but is concerned that they may not be considered ''two-way voice communications.'' We do not need to determine whether a ''call-to-listen'' service, or other similar services mentioned in the comments, are two-way services, or one-way services. We agree, however, that we should not limit the definition of ''IPES Provider'' to encompass only entities that provide two-way voice services. Instead, we eliminate the phrase ''two-way voice'' from our final rule to avoid any ambiguity and close what could have been a potential loophole in our definition of ''IPES Provider.'' No commenter objected to the removal of ''two-way voice.''

60. Second, we eliminate language in the proposed ''IPES Provider'' definition referring to ''real-time'' communications. In the *Further Notice,* we asked whether the proposed definition of ''IPES Provider'' would ''capture all providers that could be used to try to circumvent the Access Stimulation Rules.'' One commenter suggested the deletion of the requirement for the provision of ''real-time communications.'' We are concerned that arbitrageurs could develop services that do not provide ''real time'' communications in an effort to evade our Access Stimulation Rules. Like our decision to delete the phrase ''two-way voice'' from the definition of ''IPES Provider,'' the elimination of the term ''real-time'' will also help advance our goal of eliminating arbitrage of our access charge regime. Furthermore, similar to our decision to eliminate the ''two-way voice'' phrase, we need not determine whether a service provides ''real-time'' communications. By deleting the term ''real-time'' from the definition of ''IPES Provider,'' we eliminate another potential loophole in the proposed rules by capturing more providers that may try to circumvent the Access Stimulation Rules. No commenter opposed the elimination of the term ''real-time.'' With this change, and the above change to eliminate the phrase ''two-way voice,'' the phrase ''enables real-time two-way voice communications'' in the proposed definition of ''IPES Provider'' is changed to simply ''enables communications'' in the final definition we adopt in this Order.

61. Third, we define ''IPES Provider'' to include those entities that receive terminating traffic, regardless of whether they also originate traffic. In the proposed definition of ''IPES Provider,'' the requirement to originate traffic was given in the following text: ''a provider offering a service that . . . permits users . . . to terminate calls to the public switched telephone network or . . . terminate to an internet Protocol service or an internet Protocol application.'' Commenters objected to the proposed definitional language arguing that the inclusion of such language could create potential loopholes in our Access Stimulation Rules. For example, commenters asserted that if we required an IPES Provider to both originate and terminate traffic, an arbitrageur could separate terminating and originating traffic, and provide just terminating services and claim that it was not subject to the Access Stimulation Rules because it did not also originate traffic. We agree. Accordingly, we eliminate the text in the proposed definition of ''IPES Provider'' in our Access Stimulation Rules that would have applied those rules only to providers that transmit both originating and terminating traffic; no commenters requested that we require IPES Providers to originate traffic. Additionally, because our definition of ''IPES Provider'' applies to § 51.914 of our rules, we do not adopt proposed § 51.903(q). The sole purpose of proposed § 51.903(q) was to define ''IPES Provider'' for § 51.914, but that definition is not needed because § 51.914 now references the definition of IPES Provider in § 61.3(eee). No commenters addressed proposed § 51.903(q).

62. Finally, both Bandwidth and Inteliquent suggest that the definition of ''IPES Provider'' should include a requirement that the IPES Provider acquire the telephone numbers it uses directly from a numbering administrator. Bandwidth argues that this would provide a clear definition and ''capture more potential access stimulators in the marketplace.'' Alternatively, Bandwidth proposes that we modify either the Access Stimulation definition or the IPES Provider definition in our rules to account for possible ''wholesale IPES Providers.'' We find that Bandwidth's concerns are better addressed by our rule governing the calculation of traffic ratios, rather than in the definition of ''IPES Provider.'' In our new rule governing the calculation of traffic ratios for purposes of our Access Stimulation Rules, we require LECs and IPES Providers to include in their ratio calculations all traffic going through their end office or equivalent to and from any telephone number associated with an Operating Company Number issued to that LEC or IPES Provider (that is, numbers directly assigned to that LEC or IPES Provider).

2. Definition of ''Intermediate Access Provider''

63. As proposed in the *Further Notice,* we amend the definition of ''Intermediate Access Provider'' in § 61.3(ccc) of our rules to include IPES Providers as entities that may receive traffic from an Intermediate Access Provider, and to specify the type of service being provided by the Intermediate Access Provider. One commenter supported, and no commenters opposed, the proposed addition of IPES Providers to the definition of ''Intermediate Access Provider.'' As discussed below, we incorporate minor edits to the definition that we proposed in the *Further Notice.*

64. We make a total of four changes to our definition of ''Intermediate Access Provider'' in § 61.3(ccc). First, as proposed in the *Further Notice,* we amend § 61.3(ccc) to specify two additional types of entities that may receive traffic from the final IXC in the call path. The amendment we adopt adds the phrase ''IPES Provider'' to § 61.3(ccc) in two circumstances: (a) where a LEC delivers traffic to an IPES Provider engaged in access stimulation; and (b) where an Intermediate Access Provider delivers calls directly to an IPES Provider engaged in access stimulation. Second, as proposed in the *Further Notice* (with one exception), we modify the phrase ''any entity that carries or processes traffic at any point between the final Interexchange Carrier . . .'' in current § 61.3(ccc) to specify the access service being provided, as follows: ''any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier . . . .'' This change makes § 61.3(ccc) clearer and more consistent with our other Access Stimulation Rules, such as revised § 69.4(l).

65. Third, we amend the list of sections to which the revised definition of ''Intermediate Access Provider'' applies. Currently, the definition begins with: ''[t]he term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter.'' We now add §§ 51.914 and 69.4(l) to this list, because they also reference ''Intermediate Access Provider.'' We remove the reference to § 69.3(e)(12)(iv), because that section does not reference ''Intermediate Access Provider.'' Thus, the revised definition of ''Intermediate Access Provider'' begins with ''[t]he term means, for purposes of §§ 51.914, 69.4(l), and 69.5(b) of this chapter.'' Although we did not specifically propose this amendment in the *Further Notice,* we did seek comment on conforming edits and non-substantive edits to our rules. These edits to § 61.3(ccc) are conforming or non-substantive edits made to ensure consistency in our Access Stimulation Rules. Finally, we change the reference to ''Intermediate Access Provider'' in the last clause of § 61.3(ccc) in the proposed definition in the *Further Notice* to ''the entity,'' so that the definition is not self-referential. We consider this edit also to be a conforming or non-substantive edit.

66. Bandwidth suggests that we go further and broaden the definition of ''Intermediate Access Provider'' to include the possibility that there may be more than one Intermediate Access Provider in a call flow, and to prohibit all Intermediate Access Providers in the call flow from imposing any tariffed access charges when the LEC (or, with the other rule revisions adopted today, the IPES Provider) is engaged in access stimulation. We find that we do not need to broaden the definition as Bandwidth suggests, but we take this opportunity to emphasize that the definition of ''Intermediate Access Provider'' in § 61.3(ccc) of our rules includes *any entity* ''that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier in a call path'' and the LEC or IPES Provider, as discussed above. The reference to ''any entity'' was in § 61.3(ccc) prior to the revisions adopted today. Section 61.3(ccc), read in combination with §§ 51.914, 69.4(1), and 69.5(b), prohibits IXCs from being charged for terminating tandem switching or tandem transport charges provided by *any entity* that meets the definition of ''Intermediate Access Provider'' in the call flow. The definition is broad enough to include more than one entity as an Intermediate Access Provider in a call flow. Thus, the rule addresses the concerns raised by Bandwidth.

67. Bandwidth also suggests not including references to terminating switched access tandem switching or terminating switched access tandem transport services in the proposed definition of ''Intermediate Access Provider,'' and elsewhere in our Access Stimulation Rules, and replacing it with the more general term ''tariffed access services.'' Bandwidth argues that these changes are necessary to ensure that Intermediate Access Providers do not improperly impose additional tariffed charges to make up for access charge revenue they may lose as a result of our Access Stimulation Rules. As described above, § 69.111 of our rules, which defines ''tandem-switched transport and termination charge,'' specifies the four rate elements or services that will become the financial responsibility of an access-stimulating LEC or IPES Provider and addresses Bandwidth's concerns. Accordingly, we find no reason to make the additional rule changes Bandwidth proposes to address this issue.

68. Bandwidth also seems to suggest that we should expand the definition of ''Intermediate Access Provider'' to include Intermediate Access Providers on the originating side of the telephone call by adding the phrase ''or the first Interexchange carrier in an originating call path'' to the ''Intermediate Access Provider'' definition. We decline to consider the changes Bandwidth proposes, as they are outside the scope of this proceeding. This proceeding is focused on addressing arbitrage of terminating access charges. The service providers and charges involved in the arbitrage of originating access have been addressed in a separate Commission proceeding.

69. Finally, we reject Bandwidth's suggestion that we eliminate proposed § 61.3(ccc)(2) from the ''Intermediate Access Provider'' definition. Bandwidth provides no explanation for this change. The call path provided in the rule that Bandwidth seeks to remove corresponds to many situations described in the record where a LEC is located in the call path between an Intermediate Access Provider and an access-stimulating IPES Provider. We retain such call paths in the Intermediate Access Provider definition to ensure that the definition applies to entities in such call paths.

3. Calculating Traffic Ratios at the ''End Office or Equivalent'' and the Requirement That an Access Stimulator Serve End Users

70. *End Office or Equivalent.* As proposed in the *Further Notice,* we amend many of our Access Stimulation Rules to apply to traffic ratios counted at the ''end office or equivalent.'' As discussed above, we also add a definition of ''End Office Equivalent'' to ensure that our Access Stimulation Rules are also specifically applicable to IPES Providers.

71. Some commenters would prefer that we remove the phrase ''end office or equivalent'' wherever that phrase currently appears in our Access Stimulation Rules. These commenters assert that the phrase ''end office or equivalent'' complicates the calculation of traffic ratios. None of these commenters provide any examples or explanations of how our amendments

would complicate the relevant calculations, nor do they explain what alternative location should be used for purposes of calculating traffic ratios, if not at each ''end office or equivalent.'' Indeed, the commenters do not explain where the calculations are made now.

72. Commenters also assert that the phrase ''end office or equivalent'' could create new potential loopholes in our rules. AT&T, USTelecom, and NCTA posit that arbitrageurs could shift traffic between end offices to keep from meeting or exceeding the traffic ratio triggers in the Access Stimulation Rules. But these commenters do not show whether carriers allegedly engaged in access stimulation have more than one end office (or an equivalent location, in the case of IPES Providers) to move traffic between, or if they are moving traffic to another entity, or if there is some other traffic manipulation.

73. In sum, we include the phrase ''end office or equivalent'' in new § 51.914(c) and add it to § 61.3(bbb)(1)(i)(B), (bbb)(1)(ii) and (iii), and (bbb)(2) and (3) for consistency, to make the rules applicable to both LECs and IPES Providers equally, and to clearly designate where the traffic ratio calculations shall be made. We add the definition of ''End Office Equivalent'' as new § 61.3(fff) to avoid any ambiguity about the meaning of the word ''equivalent'' in the phrase ''end office or equivalent,'' as that phrase is used in our Access Stimulation Rules.

74. *Serving End User(s).* As proposed in the *Further Notice,* we retain the phrase ''serving end user(s)'' in the rule defining when a LEC, and now an IPES Provider, engages in Access Stimulation. We also add the phrase ''serving end user(s)'' to the rules defining when a LEC and, now, an IPES Provider will be deemed to continue to be engaging in Access Stimulation. Although AT&T expresses concern that this language may hinder enforcement of our Access Stimulation Rules, AT&T did not provide any explanation supporting these concerns, and acknowledged that ''[i]f IPES Providers are brought directly within the [Access Stimulation Rules], then this language may in theory become less problematic.'' The other rule revisions we make today bring IPES Providers within our Access Stimulation Rules.

75. We also decline to adopt AT&T's proposed language to define the meaning of ''serving end users'' on which we sought comment in the *Further Notice.* AT&T had proposed that we define a LEC to be ''serving end users'' when ''it provides service to a called or calling party, either directly or through arrangements with one or more VoIP providers or other entities that serve called or calling parties,'' except if the LEC is an Intermediate Access Provider. Bandwidth suggested edits to AT&T's proposed rule language, but also acknowledged that ''bringing IPES [P]roviders with direct numbering resources within the scope of the [Access Stimulation Rules] may make the 'serving end users' language unnecessary.'' AT&T also acknowledged that the inclusion of the phrase ''serving end user(s)'' in our Access Stimulation Rules indicates that it is not appropriate to calculate ratios of ''originating-to-terminating traffic for a LEC or IPES entity that includes aggregated originating traffic placed by end users not served by the LEC or IPES [P]rovider.'' This practical result would deter arbitrage and provides another reason to retain and add, where appropriate, the phrase ''serving end user(s)'' to our Access Stimulation Rules. No other commenters specifically addressed our proposed uses of the phrase ''serving end user(s).'' We find that the changes to our rules will allow for greater consistency in the Access Stimulation Rules. We also find that AT&T's and Bandwidth's proposed revisions are rendered moot by the other reforms we adopt in this Order. Accordingly, we adopt the proposed modifications and reject other proposals to define our use of the term ''serving end user(s).''

4. Interstate/Intrastate Language

76. As proposed in the *Further Notice,* we amend §§ 51.914(a)(1), 69.4(l), and 69.5(b)(1) and (2) of our rules to include the phrase ''interstate or intrastate'' to reflect language in the *Access Arbitrage* Order making clear that the rules adopted in that *Order* apply to the charges for both interstate and intrastate access services. We also include the phrase ''interstate or intrastate'' in new § 51.914(e) (which is the new designation for current § 51.914(c), because other sections have been added above it). No commenter objected to these proposed changes.

77. In the *Access Arbitrage Order,* the Commission made clear that the rules it was adopting to combat access stimulation were intended to prohibit providers of tandem switching and transport from billing IXCs for interstate and intrastate terminating switched access tandem switching or terminating switched access tandem transport, for traffic bound for access-stimulating LECs. The Commission explained that applying the rules ''equally to interstate and intrastate traffic will discourage gamesmanship related to the geographic classification of the traffic; *i.e.,* carriers creating ways to move access-stimulation schemes to intrastate service.'' The reference to intrastate traffic was not reflected in the text of the rules, however. As proposed in the *Further Notice,* we now amend §§ 51.914(a)(1), 69.4(l), and 69.5(b)(1) and (2) of our rules to make clear that competitive LECs, rate-of-return LECs, and Intermediate Access Providers shall not charge IXCs for interstate or intrastate terminating switched access tandem switching and terminating switched access tandem transport when the terminating traffic is destined for a competitive LEC, rate-of-return LEC, or IPES Provider engaged in access stimulation, as defined in § 61.3(bbb) of our rules.

78. We reject, however, Bandwidth's suggestion that we add the term ''intrastate'' to the definition of ''Access Stimulation'' in § 61.3(bbb) of our rules or delete references to ''interstate'' throughout that section. Bandwidth briefly comments that this will make the section ''consistent with [the] proposal [in the Further Notice] that [the] rules address intrastate access.'' We disagree. Bandwidth's proposed changes would result in providers having to include both interstate and intrastate traffic in calculating their ratios of terminating traffic to originating traffic. That is not consistent with our intent in this Order or with the Commission's actions in the *Access Arbitrage Order.* Bandwidth is correct that we proposed rule amendments reflecting language in the *Access Arbitrage Order* indicating that when a LEC or IPES Provider is engaged in access stimulation, the IXC shall not be charged interstate or intrastate terminating switched access tandem switching and terminating switched access tandem transport charges. That is different, however, than requiring that both intrastate and interstate traffic be included in the traffic ratio calculations described in § 61.3(bbb) of our rules. Not only is Bandwidth's proposal contrary to the language in the *Access Arbitrage Order* and *Further Notice,* but Bandwidth does not provide any justification for us to adopt this significant change to our Access Stimulation Rules. We therefore reject Bandwidth's proposed modifications to § 61.3(bbb) of our Access Stimulation Rules.

5. Conforming Edits to Our Rules

79. We amend §§ 51.914(a)(2) and (b)(2), 69.4(l), and 69.5(b)(1) and (2) of our rules to eliminate inconsistencies among sections of the Access Stimulation Rules that are meant to be consistent. We received no comment opposing these proposed rule revisions

and therefore adopt the rules as proposed. New § 51.914(c)(1) and (d)(2) are consistent with our amendments to § 51.914(a)(2).

80. We amend § 51.914(a)(2) of our rules to remove any ambiguity about its mandatory requirement. The unrevised § 51.914(a)(2) requires that an access-stimulating LEC shall designate, ''if needed,'' the Intermediate Access Provider that will provide certain terminating access services to the LEC. This designation applies in cases where an Intermediate Access Provider is different from the end office LEC. However, the current wording may lead to a misconception that a LEC may subjectively decide on its own when this designation is needed. Therefore, as we proposed in the *Further Notice,* we change the phrase ''if needed'' to ''if any.'' We similarly use the phrase ''if any'' in new § 51.914(c)(1) and (d)(2) which apply to an access-stimulating IPES Provider and its designation of an Intermediate Access Provider. We received no comment about ensuring that new § 51.914(c)(1) and (d)(2) conform with the proposed edit to § 51.914(a)(2), and we adopt the rule language as proposed. We also amend § 51.914(b)(2) by adding the phrase ''if any'' and similarly require the designation of an Intermediate Access Provider ''if any'' that will provide service to an access-stimulating LEC. This addition is a conforming edit intended to ensure consistency in our Access Stimulation Rules.

81. We amend current § 51.914(d), which applies when traffic is bound for a LEC engaged in access stimulation, to also apply when traffic is bound for an IPES Provider engaged in access stimulation, consistent with our intent to conform our Access Stimulation Rules to apply equally to IPES Providers, as well as to LECs, and redesignate the section as 51.914(f). We do not add the phrase ''or receives traffic from an Intermediate Access Provider destined for an IPES Provider engaged in Access Stimulation,'' as we proposed in the *Further Notice,* because we find it redundant and unnecessary. We received no comments addressing specific terms in this proposed rule. The rule is now § 51.914(f), because other rules were added that precede it.

82. We amend § 69.4(l) of our rules to ensure that the requirement to not bill certain carriers is mandatory. Section 69.4(l) currently requires that a LEC engaged in access stimulation ''may not bill'' IXCs terminating switched access tandem switching or terminating switched access tandem transport charges for access-stimulation traffic. However, in the *Access Arbitrage Order,* the Commission made clear that it is unlawful for a LEC engaged in access stimulation to charge an IXC terminating switched access tandem switching or terminating switched access tandem transport charges. As we proposed in the *Further Notice,* we change the phrase ''may not bill'' to ''shall not bill,'' in § 69.4(l) to eliminate any ambiguity that a LEC engaged in access stimulation ''shall not bill'' IXCs terminating switched access tandem switching or terminating switched access tandem transport charges for access-stimulation traffic.

83. We also make consistent where appropriate in the Access Stimulation Rules the references to ''terminating switched access tandem switching or terminating switched access transport'' services. Currently, some of the Access Stimulation Rules refer to ''terminating switched access tandem switching *or* terminating switched access transport,'' and some refer to ''terminating switched access tandem switching *and* terminating switched access transport.'' This primarily is an inadvertent error which results in an inconsistency in the rules that may be exploited by entities engaged in access stimulation or that want to engage in access stimulation. For example, with the use of the ''and'' in § 51.914(b)(2), we are concerned that a LEC engaged in access stimulation may claim that it does not use an Intermediate Access Provider that provides both tandem switching *and* transport, and argue that it, therefore, does not need to provide the notifications required in § 51.914(b)(2). Such an outcome would be contrary to our rules and policies against arbitrage. We have indicated our intention to remove potential loopholes in our Access Stimulation Rules, reduce opportunities for arbitrage, and minimize unintended consequences. In furtherance of those goals, we change ''terminating switched access tandem switching *and* terminating switched access transport'' to ''terminating switched access tandem switching *or* terminating switched access transport'' in § 51.914(a)(2) and (b)(2), and the word ''or'' is used in new § 51.914(c)(1) and (d)(2) to make clear that the rules apply to either, or both, terminating switched access tandem switching and terminating switched access transport.

84. We adopt our proposed amendments to § 69.5(b)(2) to: (a) correct the inadvertent omission of the word ''not''; (b) change the word ''may'' to ''shall'' to be consistent with other uses in these rules; and (c) make clear that it is ''IXCs'' and not ''LECs'' that are not being charged access charges under our Access Stimulation Rules. We make similar amendments to § 69.5(b)(1) to be consistent with § 69.5(b)(2). Thus, we correct ''may not'' to ''shall not.'' We also make a wording clarification by adding ''of this part'' to the two references to ''§ 69.4(b)(5)'' in § 69.5(b)(1) and (2). Finally, we edit text in § 69.5(b)(1) and (2), for consistency between those sections. Thus, the middle of both sections now refers to traffic that is destined ''for a competitive local exchange carrier, or a rate-of-return local exchange carrier, or is destined, directly or indirectly, for an IPES Provider, where such carrier or Provider is engaged in Access Stimulation.'' These are conforming and non-substantive edits made to ensure consistency in our Access Stimulation Rules. These amendments are shown in Appendix A.

D. Legal Authority

85. We conclude that sections 201, 251, and 254 of the Act provide us with the authority needed to adopt the definitions, rule changes, and rule additions contained in this Order. Several commenters support our tentative conclusion in this regard in the *Further Notice* and the use of ancillary authority pursuant to section 4(i) of the Act. Commenters also point out that the rules we adopt in the Order are similar to other requirements the Commission has imposed on IP providers. Although the Commission has never asserted expansive jurisdiction over IP providers, it has consistently adopted rules to address specific issues and serve the public interest. The rules we adopt today are consistent with that practice. Our new rules directed at IPES Providers are narrowly tailored to address specific concerns related to access arbitrage. For example, although we require IPES Providers to calculate their traffic ratios and comply with the Access Stimulation Rules' reporting requirements, we do not require an access-stimulating IPES Provider to pay an Intermediate Access Provider's tandem and transport access charges.

86. *Section 201 of the Act.* In the *Access Arbitrage Order,* the Commission determined that imposing tariffed tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic is an unjust and unreasonable practice under section 201(b) of the Act. In rejecting challenges to the *Access Arbitrage Order,* the United States Court of Appeals for the D.C. Circuit held that ''[o]n its face, Section 201(b) gives the Commission broad authority to define and prohibit practices or charges that it determines unreasonable. Fees intentionally accrued by artificially

stimulating and inefficiently routing calls would appear to fall within that wide authority.'' Thus, we find that we have ample authority to adopt the limited rule revisions in this Order.

87. Providers' attempts to assess tandem switching or tandem switched transport access charges on IXCs for delivering traffic to access-stimulating IPES Providers are virtually indistinguishable from practices the Commission has already found to be unjust and unreasonable. Section 201(b) of the Act gives us the authority to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'' This language provides us with the authority to prohibit Intermediate Access Providers or other LECs from charging IXCs tariffed tandem switching and transport access charges for traffic routed to an access-stimulating IPES Provider, or an access-stimulating LEC. Furthermore, section 201(b) grants us authority to ensure that all charges and practices ''in connection with'' a common carrier service are ''just and reasonable.'' This authority encompasses a situation, such as here, where an IPES Provider is receiving traffic from Intermediate Access Providers and/or LECs for the purpose of engaging in access arbitrage. Thus, section 201(b) grants us authority to require IPES Providers to designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and transport services, and to require IPES Providers to calculate their traffic ratios and notify Intermediate Access Providers, IXCs, and the Commission if the IPES Provider is engaged in access stimulation. Intermediate Access Providers will then be able to determine whether they can lawfully charge IXCs for interstate and intrastate tandem switching and transport services (and IXCs can determine if such charges are appropriate).

88. *Sections 251 and 254 of the Act.* Our authority to adopt these rule revisions is also rooted in other sections of the Act on which the Commission relied in the *Access Arbitrage Order.* First, section 251(b)(5) of the Act gives us authority to regulate exchange access and providers of exchange access, during the transition to bill-and-keep. Indeed, the Commission ''br[ought] all traffic within the section 251(b)(5) regime'' years ago, as part of the reforms adopted in the *USF/ICC Transformation Order.* Second, section 251(g) of the Act provides us with the authority to address problematic conduct that occurs during the ongoing transition to bill-and-keep. Third, section 254 of the Act provides the Commission with the authority to eliminate implicit subsidies. To the extent that the access charges paid by IXCs for access-stimulation traffic continue to subsidize LEC networks, section 254 gives us the authority to adopt the rules in this Order to eliminate those implicit subsidies. The rules we adopt are intended to encourage terminating LECs and IPES Providers to make efficient interconnection choices in the context of access-stimulation schemes and are thus consistent with longstanding Commission policy and Congressional direction. Accordingly, sections 201, 251, and 254 of the Act give us the authority to adopt the rules described in this *Order.*

89. *Section 4(i) of the Act.* Although we conclude that the statutory sections identified above provide us sufficient authority to adopt our revised rules, we also conclude that our ancillary authority pursuant to section 4(i) of the Act provides an additional, independent basis to adopt limited rules with respect to IPES Providers. Commenters agreed with this conclusion; no commenters disagreed. Section 4(i) of the Act gives the Commission the authority to perform acts, adopt rules, and issue orders, as necessary in the execution of its functions. The D.C. Circuit has determined that the Commission's exercise of its ancillary authority is appropriate when '' '(1) the Commission's general jurisdictional grant under Title I [of the Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.' '' The requirements we adopt today, that are applicable to IPES Providers, are ''reasonably ancillary to the Commission's effective performance of [its] responsibilities.'' Specifically, IPES Providers interconnected with the PSTN and exchanging IP traffic clearly provide ''interstate . . . communication by wire or radio'' pursuant to section 152(a) of the Act. The rules we adopt, that are applicable to IPES Providers, are reasonably ancillary to our established authority to deter access arbitrage. For example, the Commission has found it to be an unjust and unreasonable practice under section 201(b) of the Act for IXCs to pay terminating tandem switching and tandem switched transport charges for the delivery of access-stimulation traffic. The record indicates that IPES Providers have been inserted into the call flow in an effort to evade this holding and for parties to continue to engage in access stimulation. Therefore, we are justified in asserting our ancillary authority in adopting rule revisions applicable to IPES Providers to help deter access arbitrage and ensure just and reasonable practices under our statutory responsibilities provided in section 201(b) of the Act.

90. Similarly, as the Commission has repeatedly made clear, it may, pursuant to section 251(b)(5), require the transition of access charges to a bill-and-keep framework. And, the Commission has recognized that section 251(g) grandfathers the historical exchange access system ''until the Commission adopts rules to transition away from the system.'' In the *Access Arbitrage Order* the Commission found that access stimulation arises, ''in significant part, because of ways in which the Commission's planned transition to bill-and-keep is not yet complete, and in that context, we find it necessary to address problematic conduct that we observe on a transitional basis until that comprehensive reform is finalized.'' In this Order, we have found that IPES Providers are inserted into the call flow for the purpose of collecting inflated, tariffed terminating tandem switching and transport access charges from IXCs. This practice is contrary to the Commission's stated goal of transitioning to bill-and-keep; that is, reducing the access charges carriers pay one another. Taking action to deter the insertion of IPES Providers into a call flow, in direct contravention of Commission precedent, orders and rules, is reasonably ancillary to our statutory mission to ensure just and reasonable rates and practices under section 201(b) of the Act.

91. Finally, as relevant here, the Commission has previously applied the statutory requirements of section 254 to VoIP providers pursuant to its ancillary authority. Specifically, the Commission found that its statutory requirement to establish ''specific, predictable and sufficient mechanisms . . . to preserve and advance universal service'' necessitated that VoIP providers contribute to the Universal Service Fund. As discussed above, section 254 also requires the elimination of implicit subsidies. Asserting ancillary authority over IPES Providers will help ensure that LEC networks are not implicitly subsidized by access charges for access-stimulation traffic. This action will help close a perceived loophole in our rules that has been exploited by those interested in continued arbitrage of our access charge regime and the improper use of access charges to fund ''free,'' or no-cost to the consumer, high-volume calling services. For these reasons, we conclude that requiring IPES Providers,

as defined for the purposes of our Access Stimulation Rules, to comply with our limited revised rules is reasonably ancillary to the Commission's effective performance of its statutory responsibilities as described above.

E. Cost Benefit Analysis

92. *Harms of Access Arbitrage.* Access arbitrage exploits our intercarrier compensation regime by requiring the payment of terminating switched access tandem switching and switched access transport charges for activities and to providers that our policies are not intended to benefit. As Bandwidth explains, ''[s]o long as access charges exist, . . . parties that originate and terminate traffic have an incentive to arbitrage the associated economies for themselves, their affiliates, and their carrier partners. The purpose of this proceeding is to reduce the arbitrage and fraud based on that incentive.'' Parties pursue access arbitrage opportunities by artificially stimulating traffic, and then routing that traffic along more expensive, and/or less efficient, call paths. We first outline how the actions we take today will reduce the various harms caused by access arbitrage. We then show that the expected benefits from reducing just one of the harms—reducing the burden on IXCs to avoid being exploited—exceed the estimated costs of our actions.

93. The record does not allow us to fully quantify the cost of artificial traffic stimulation and inefficient routing, but given that tens of millions of dollars of payments are made to access arbitrageurs, these costs are likely high. The waste of inefficient traffic routing is acute because the party that chooses the call path does not pay the relevant intercarrier compensation charges, and instead typically gains from them. The costs of access stimulation are also likely large because the costs of these traffic-generating activities are not fully paid for by the users of the high-volume calling services, who often pay nothing for these services. This means some consumers use such services even though they value them less than the cost of supply. It also means consumers who do not use the high-volume calling services effectively pay for them when they purchase other telecommunications services at rates that are higher because they are based on recovering the costs of artificially inflated access charges their carriers must pay to deliver access-stimulation traffic. These rates unnecessarily and inefficiently curtail demand for those other telecommunications services. If providers of high-volume calling services were to charge prices that wholly recovered the costs of arbitrage (rather than a portion of those costs being borne by consumers who do not use high-volume calling services), then purchases of the high-volume calling services would decline, leaving only purchases where the consumer values the service at more than its cost. Every call minute so reduced would help eliminate waste or create value equal to the difference between the cost-covering prices and these low-demand consumers' valuations of the service. At the same time, a reduction in the costs paid by other consumers due to a decrease in arbitrage would efficiently expand the use of telecommunications services, to the benefit of the general public by, for example, reducing call congestion and service disruptions caused by access stimulation.

94. Behavior driven by access arbitrage also threatens the Commission's mandate to ensure that telecommunications services are provided at just and reasonable rates. The telecommunications network depends on carriers being able to exchange vast quantities of traffic every minute in an efficient and reasonable manner at just and reasonable rates absent the artificial inflation of costs due to arbitrage. Without the actions we take today, this process of exchanging traffic—fundamental to personal and business interactions across our nation—would be undermined, thereby threatening the longer-term viability of the network. We are not able to quantify this harm with a specific cost in dollars, but any threat to the long-term viability of the nationwide communications network is intolerable and subject to our legislative mandate to ensure just and reasonable rates and practices for consumers.

95. Lastly, service providers seeking to avoid being exploited by access arbitrageurs must engage in costly defensive measures that would be unnecessary in the absence of access arbitrage. Examples of these wastes include:

- disputes over questionable demands for payment by tandem service providers that send calls to apparent access stimulators;
- attempts by IXCs to identify the sources of traffic that appears to have been arbitraged; and
- time and money spent by parties seeking to protect against or reduce access arbitrage opportunities, as in this proceeding.

96. Evidence from AT&T allows us to demonstrate the costs parties incur in seeking to avoid being exploited by access arbitrageurs would vastly exceed the costs parties would incur as a result of the rules we adopt today. For example, AT&T reported spending 15,000 employee-hours over three years to identify and combat access stimulation. Applying an hourly rate of $50, the annual expense of this labor for AT&T alone would come to $250,000. If the Commission takes no action, AT&T would incur similar annual costs every year. Even if, being conservative, our actions were to save AT&T just half of the costs it may incur in only three years, this would be a benefit of approximately $300,000. The actual cost savings will be much higher, however: AT&T will save costs every year well beyond just a three-year period. In addition, AT&T is only one of many IXCs that are harmed by access arbitrage. Every IXC that delivers traffic to access stimulators will also realize savings. These estimates do not even count the gains from reducing the unquantified, but likely much more significant, harms discussed above.

97. *Costs of Our New Rules.* When the 2019 *Access Arbitrage Order* was adopted, at least 21 carriers were identified as allegedly engaging in access stimulation. At least five former access-stimulating LECs have notified the Commission that they have left the access-stimulation business. That suggests 16 LECs are engaged in access stimulation today. We assume a similar number of IPES Providers engage in access stimulation. In that case, our Access Stimulation Rules would impact approximately 30 providers. Our existing, modified and new Access Stimulation Rules will require those providers to: (1) perform traffic studies; (2) calculate traffic ratios to determine if they are engaged in access stimulation under the traffic ratios in our Access Stimulation Rules; (3) notify Intermediate Access Providers, IXCs, and the Commission if they are engaged in access stimulation; and (4) notify Intermediate Access Providers, IXCs, and the Commission if they are no longer engaged in access stimulation. Those access-stimulating providers that file tariffs may also have to: (1) adjust their billing systems to no longer bill IXCs; and (2) modify their tariffs to ensure that IXCs are not billed for tandem switching or tandem transport access charges for calls delivered to access-stimulating LECs or IPES Providers. As the Commission did in the 2019 *Access Arbitrage Order,* we estimate that the required effort for each firm (here, a LEC or IPES Provider) would be unlikely to exceed 100 hours of work. By applying an hourly rate of $100, the present value of the costs that

all access-stimulating LECs or IPES Providers may incur would not exceed $300,000.

98. *The Benefits of Our New and Revised Rules Outweigh Their Costs.* The rules we adopt today promote the integrity of tariffed rates for tandem switching and tandem switched transport services, and hence the goal of connectivity—the ability of consumers to connect with each other across the entire U.S. telecommunications network—at just and reasonable rates. By meeting our legislative responsibility to ensure IXCs do not pay tariffed tandem switching and transport rates for access-stimulation traffic, which the Commission has found to be an unjust and unreasonable practice, we help to protect the policies that underlie our intercarrier compensation rules, and the widespread willingness of carriers to interconnect and deliver calls across the network. Although the bulk of the benefits of maintaining the ability to connect with each other cannot be quantified, as we have shown, even the quantifiable components are significant and likely are vastly greater than $300,000—our present value estimate of the costs of our actions.

Procedural Matters

99. *Paperwork Reduction Act Analysis.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such new or modified information collection requirements will be submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

100. In this Order, we have assessed the effects of requiring IPES Providers to keep necessary records, calculate applicable ratios, and provide required third-party disclosure of certain information to the Commission, parties they do business with and the public, and find that IPES Providers likely keep this information and perform these responsibilities in the normal course of business. Therefore, these additional requirements should not be overly burdensome. We do not believe there are many access-stimulating IPES Providers operating today but note that of the small number of access-stimulating IPES Providers in existence, most, if not all, will be affected by this Order. We believe that access-stimulating IPES Providers are typically smaller businesses and may employ fewer than 25 people. We sought comment on the potential effects of the information collection rules we adopt today in the *Further Notice,* and we received no comment specifically addressing burdens on small business concerns either in response to this request or on our Initial Regulatory Flexibility Act Analysis. We find the benefits that will be realized by a decrease in the uneconomic effects of access stimulation outweigh any burden associated with the changes required by this Second Report and Order.

101. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

102. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* for the access arbitrage proceeding. We sought written public comments on the proposals in the *Further Notice,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

103. For over a decade, the Commission has combatted arbitrage of its access charge regime, which ultimately raises the rates consumers pay for telecommunications service. In the 2011 *USF/ICC Transformation Order,* the Commission adopted rules identifying local exchange carriers (LECs) engaged in access stimulation and requiring that such LECs lower their tariffed access charges. In 2019, to address access arbitrage schemes that persisted despite prior Commission action, the Commission adopted the *Access Arbitrage Order,* in which it revised its Access Stimulation Rules to prohibit LECs and Intermediate Access Providers from charging interexchange carriers (IXCs) for terminating tandem switching and transport services used to deliver calls to access-stimulating LECs.

104. Since the 2019 rules were implemented, the Commission has received information about new ways entities are manipulating their businesses to continue their arbitrage schemes in the wake of the new rules. In this Order, we adopt rule revisions to close perceived loopholes in our Access Stimulation Rules that are being exploited by opportunistic access-stimulating entities whose actions ultimately cause consumers to continue to bear costs for services they do not use.

105. We modify our Access Stimulation Rules to address access arbitrage that takes place when an internet Protocol Enabled Service (IPES) Provider is incorporated into the call flow. When a LEC or Intermediate Access Provider delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider meet or exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, a LEC or an Intermediate Access Provider will be prohibited from charging an IXC tariffed charges for terminating switched access tandem switching and switched access transport for traffic bound to an IPES Provider whose traffic meets or exceeds the ratios in § 61.3(bbb)(1)(i) or (ii) of our Access Stimulation Rules. The IPES Provider will be responsible for calculating its traffic ratios and for making the required notifications to the affected IXC(s), Intermediate Access Provider(s) and the Commission. We likewise modify the definition of Intermediate Access Provider to include entities delivering traffic to an IPES Provider. The rules we adopt will serve the public interest by reducing the incentives and ability to send traffic over the Public Switched Telephone Network for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to fund high-volume calling services, which the Commission has found to be an unjust and unreasonable practice.

106. The reforms adopted in this Order apply the same framework that we currently use for competitive LECs that have engaged in access stimulation to determine when an IPES Provider that was engaged in access stimulation no longer is considered to be engaged in access stimulation. The Access Stimulation Rules currently require traffic ratios to be calculated at the end office. The rules adopted today apply this manner of traffic calculations to IPES Providers as well. Affected entities must comply with the final rules no

later than 45 days after their effective date. The effective date is 30 days after publication in the **Federal Register** except for certain rule revisions which contain information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act. The effective date for these latter rules will be announced separately by the Commission.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

107. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration

108. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

109. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Final Rules Will Apply

110. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

111. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

112. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

113. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

114. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

115. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

116. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

117. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired

Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

118. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

119. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

120. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

121. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

122. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

123. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there

were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

124. The rule revisions adopted in the Order will affect LECs, Intermediate Access Providers, and IPES Providers. This Order modifies our Access Stimulation Rules to address arbitrage which takes place when an IPES Provider is incorporated into the call flow. In this Order, we adopt rules to further limit or eliminate the occurrence of access arbitrage, including access stimulation, which could affect potential reporting requirements. The adopted rules also contain recordkeeping, reporting, and third-party notification requirements for access-stimulating LECs and IPES Providers, which may impact small entities. Some of the requirements may also involve tariff changes.

125. The rules adopted in the Order require that when an Intermediate Access Provider or a LEC delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider meet or exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In those cases, the IPES Provider will be responsible for calculating its traffic ratios and for making the required third-party notifications. As such, providers may need to modify their in-house recordkeeping to comply with the new rules. If the IPES Provider's traffic ratios meet or exceed the applicable rule triggers, it must notify the Intermediate Access Providers it subtends, the Commission, and affected IXCs. The Intermediate Access Provider is then prohibited from charging IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

126. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.''

127. The actions taken by the Commission in the Order were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the Order to minimize any significant economic impact on small entities and some alternatives that were considered.

128. *Transition Period To Assist Small Entity Compliance.* To minimize the impact of changes that may affect entities, we implement up to a 45-day transition period for compliance. We expect that transition period will allow even small business entities adequate time to amend their tariffs and recordkeeping, reporting and third-party notification practices, if needed, to meet the requirements in the adopted rules. This will also allow time if parties choose to make additional changes to their operations as a result of our reforms to further reduce access stimulation. To ensure clarity and increase transparency, we require that access-stimulating LECs and IPES Providers notify affected IXCs, Intermediate Access Providers, and the Commission of their access-stimulating status within 45 days of PRA approval (or, for an entity that later engages in access stimulation, within 45 days from the date it commences access stimulation), and file a notice in the Commission's Access Arbitrage docket on the same date and to the same effect.

129. We announced aspects of the transition period in the *Further Notice,* and received no related comments. Such changes are also subject to the Paperwork Reduction Act approval process which allows for additional notice and comment on the burdens associated with the requirements. This process will occur after adoption of this Order, thus providing additional time for parties to make the changes necessary to comply with the newly adopted rules. Also, being mindful of the attendant costs of any reporting obligations, we do not require that affected entities adhere to a specific notice format. Instead, we allow each responding entity to prepare third-party notice and notice to the Commission in the manner they deem to be most cost-effective and least burdensome, provided the notice announces the entities' access-stimulating status and acceptance of financial responsibility. Furthermore, by electing not to require carriers to fully withdraw and file entirely new tariffs and requiring only that they revise their tariffs to remove relevant provisions, if necessary, we mitigate the filing burden on affected carriers.

130. We consider any potential billing system changes to be straightforward, but to allow sufficient time for affected parties, including small business entities, to make any adjustments. We grant small entities the same period from the effective date for implementing such changes. Thus, affected Intermediate Access Providers have 45 days from the effective date of this rule (or, with respect to those entities that later engage in access stimulation, within 45 days from the date such entities commence access stimulation) to implement any billing system changes or prepare any tariff revisions which they may see fit to file. The time granted by this period should help small business entities affected make an orderly, less burdensome, transition.

131. These same considerations were taken into account for LECs and IPES Providers that cease access stimulation, a change that carries concomitant reporting obligations and to which we apply associated transition periods for billing changes and/or for tariff revisions that, collectively, are virtually identical to those mentioned above.

G. Report to Congress

132. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

133. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 201, 251, 254, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 251, 254, and 303(r), and section 1.1 of the Commission's rules, 47 CFR 1.1, this Second Report and Order *is adopted*.

134. *It is further ordered* that, pursuant to sections 1.4, 1.103 and 1.427 of the Commission's Rules, 47 CFR 1.4, 1.103, 1.427, the amendments to the Commission's rules as set forth in Appendix A *are adopted*, effective 30

days after publication in the **Federal Register**, except that the amendments to § 51.914(d) and (g) of the Commission's rules, 47 CFR 51.914(d) and (g), which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. Compliance with the amendments to the Commission's rules as set forth in Appendix A will be required 45 days following the effective date. The Commission directs the Wireline Competition Bureau to announce the effective dates and the compliance dates for § 51.914(d) and (g) by subsequent Public Notice.

135. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

136. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications; Communications common carriers; Telecommunications; Telephones.

47 CFR Part 61

Communications common carriers; Reporting and recordkeeping requirements; Telephones.

47 CFR Part 69

Communications common carriers; Reporting and recordkeeping requirements; Telephones.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons set forth above, the Federal Communications Commission amends parts 51, 61, and 69 of title 47 of the Code of Federal Regulations as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 225–27, 251–52, 271, 332 unless otherwise noted.

■ 2. Revise § 51.914 to read as follows:

§ 51.914 Additional provisions applicable to Access Stimulation traffic.

(a) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later:

(1) Not bill any Interexchange Carrier for interstate or intrastate terminating switched access tandem switching or terminating switched access transport charges for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch; and

(2) Designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching or terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) Assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch.

(b) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is a local exchange carrier engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) That the local exchange carrier shall pay for those services as of that date.

(c) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, then within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later:

(1) The IPES Provider shall designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching or terminating switched access tandem transport services to the IPES Provider engaged in Access Stimulation; and further

(2) The IPES Provider may assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such IPES Provider's terminating end office or equivalent and the associated access tandem switch; and

(3) The Intermediate Access Provider shall not assess any charges for such services to the Interexchange Carrier.

(d) [Reserved].

(e) In the event that an Intermediate Access Provider receives notice under paragraph (b) of this section that it has been designated to provide terminating switched access tandem switching or terminating switched access tandem transport services to a local exchange carrier engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, or to an IPES Provider engaged in Access Stimulation, directly, or indirectly through a local exchange carrier, and that local exchange carrier engaged in Access Stimulation shall pay or the IPES Provider engaged in Access Stimulation may pay for such terminating access service from such Intermediate Access Provider, the Intermediate Access Provider shall not bill Interexchange Carriers for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport service for traffic bound for such local exchange carrier or IPES Provider but, instead, shall bill such local exchange carrier or may bill such IPES Provider for such services.

(f) Notwithstanding paragraphs (a) through (c) of this section, any local exchange carrier that is not itself engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, but serves as an Intermediate Access Provider with respect to traffic bound for a local exchange carrier engaged in Access Stimulation or bound for an IPES Provider engaged in Access Stimulation, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by paragraphs (a) and (b) of this section.

(g) [Reserved].

■ 3. Delayed indefinitely, § 51.914 is amended by adding paragraphs (d) and (g) to read as follows:

§ 51.914 Additional provisions applicable to Access Stimulation traffic.

* * * * *

(d) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days after [the effective date of this paragraph (d)—which will be 30 days after the Commission publishes the notification of OMB approval in the **Federal Register**], whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is an IPES Provider engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services directly, or indirectly through a local exchange carrier, to the IPES Provider engaged in Access Stimulation; and

(3) Whether the IPES Provider will pay for those services as of that date.

* * * * *

(g) Upon terminating its engagement in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the local exchange carrier or IPES Provider engaged in Access Stimulation shall provide concurrent, written notification to the Commission and any affected Intermediate Access Provider(s) and Interexchange Carrier(s) of such fact.

PART 61—TARIFFS

■ 4. The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, unless otherwise noted.

■ 5. Section 61.3 is amended by revising paragraphs (bbb)(1) through (3), adding paragraphs (bbb)(5), revising paragraph (ccc), and adding paragraphs (eee) and (fff) to read as follows:

§ 61.3 Definitions.

* * * * *

(bbb) * * *

(1) A Competitive Local Exchange Carrier serving end user(s) or an IPES Provider serving end user(s) engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (ii) of this section; and a rate-of-return local exchange carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (iii) of this section.

(i) The rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider:

(A) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider to the other party to the agreement shall be taken into account; and

(B) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in an end office or equivalent in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year for such end office or equivalent.

(ii) A Competitive Local Exchange Carrier or IPES Provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office or equivalent in a calendar month.

(iii) A rate-of-return local exchange carrier has an interstate terminating-to-originating traffic ratio of at least 10:1 in an end office or equivalent in a three-calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in the same end office in the same three-calendar month period. These factors will be measured as an average over the three-calendar month period.

(2) A Competitive Local Exchange Carrier serving end user(s), or an IPES Provider serving end user(s), that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier or provider engaging in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (bbb)(1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (bbb)(1)(ii) of this section; and for a carrier or provider engaging in Access Stimulation as defined in paragraph (bbb)(1)(ii) of this section, its interstate terminating-to-originating traffic ratio for an end office or equivalent falls below 6:1 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section.

(3) A rate-of-return local exchange carrier serving end user(s) that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier engaging in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (bbb)(1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (bbb)(1)(iii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (bbb)(1)(iii) of this section, its interstate terminating-to-originating traffic ratio falls below 10:1 for six consecutive months and its monthly interstate terminating minutes-of-use in an end office or equivalent falls below 500,000 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section.

* * * * *

(5) In calculating the interstate terminating-to-originating traffic ratio at each end office or equivalent under this paragraph (bbb), each Competitive Local Exchange Carrier, rate-of-return local exchange carrier or IPES Provider shall include in such calculation only traffic traversing that end office or equivalent and going to and from any telephone number associated with an Operating Company Number that has been issued to such Competitive Local Exchange Carrier, rate-of-return local exchange carrier or IPES Provider. The term ''equivalent'' in the phrase ''end office or equivalent'' means ''End Office Equivalent,'' as defined in this section.

(ccc) *Intermediate Access Provider.* The term means, for purposes of this part and §§ 51.914, 69.4(1), and 69.5(b) of this chapter, any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier in a call path and:

(1) A local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or

(2) A local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or

(3) An IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section, where the entity delivers calls directly to the IPES Provider.

* * * * *

(eee) *IPES (Internet Protocol Enabled Service) Provider.* The term means, for purposes of this part and §§ 51.914, 69.4(l) and 69.5(b) of this chapter, a provider offering a service that:

(1) Enables communications;

(2) Requires a broadband connection from the user's location or end to end;

(3) Requires internet Protocol-compatible customer premises equipment (CPE); and

(4) Permits users to receive calls that originate on the public switched telephone network or that originate from an Internet Protocol service.

(fff) *End Office Equivalent.* For purposes of this part and §§ 51.914, 69.3(e)(12)(iv) and 69.4(l) of this chapter, an End Office Equivalent is the geographic location where traffic is delivered to an IPES Provider for delivery to an end user. This location shall be used as the terminating location for purposes of calculating terminating-to-originating traffic ratios, as provided in this section. For purposes of the Access Stimulation Rules, the term ''equivalent'' in the phrase ''end office or equivalent'' means End Office Equivalent.

PART 69—ACCESS CHARGES

■ 6. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 7. Section 69.4 is amended by revising paragraph (l) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(l) Notwithstanding paragraph (b)(5) of this section, a competitive local exchange carrier or a rate-of-return local exchange carrier engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the Intermediate Access Provider it subtends, or an Intermediate Access Provider that delivers traffic directly or indirectly to an IPES Provider engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, shall not bill an Interexchange Carrier, as defined in § 61.3(bbb) of this chapter, for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport charges for any traffic between such competitive local exchange carrier's, such rate-of-return local exchange carrier's, or such IPES Provider's terminating end office or equivalent and the associated access tandem switch.

■ 8. Section 69.5 is amended by revising paragraph (b) to read as follows:

§ 69.5 Persons to be assessed.

* * * * *

(b) Carrier's carrier charges shall be computed and assessed upon all Interexchange Carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that:

(1) Competitive local exchange carriers and rate-of-return local exchange carriers shall not assess terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges described in § 69.4(b)(5) on Interexchange Carriers when the terminating traffic is destined for a competitive local exchange carrier, or a rate-of-return local exchange carrier, or is destined, directly or indirectly, for an IPES Provider, where such carrier or Provider is engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv).

(2) Intermediate Access Providers shall not assess terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges described in § 69.4(b)(5) on Interexchange Carriers when the terminating traffic is destined for a competitive local exchange carrier, or a rate-of-return local exchange carrier, or is destined, directly or indirectly, for an IPES Provider, where such carrier or Provider is engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv).

* * * * *

[FR Doc. 2023–10661 Filed 5–31–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 88, No. 105
Thursday, June 1, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0007]

RIN 1904–AE63

Energy Conservation Program: Energy Conservation Standards for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

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 electric motors. In this document, DOE proposes amended energy conservation standards for electric motors identical to those set forth in a direct final rule published elsewhere in this **Federal Register**. If DOE receives an adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, DOE will publish a notice withdrawing the direct final rule and will proceed with this proposed rule.

DATES:

Comments: DOE will accept comments, data, and information regarding this NOPR no later than September 19, 2023.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before July 3, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2020–BT–STD–0007. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0007, by any of the following methods:

Email: ElecMotors2020STD0007@ee.doe.gov. Include the docket number EERE–2020–BT–STD–0007 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-STD-0007.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V of this document for information on how to submit comments through *www.regulations.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act

Continued

the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317). Such equipment includes electric motors, the subject of this rulemaking.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the 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. 6316(a); 42 U.S.C. 6295(m))

Elsewhere in this **Federal Register**, DOE is issuing a direct final rule amending the energy conservation standards for electric motors, along with this proposed rule as required by EPCA. (42 U.S.C. 6295(p)(4)(A)(i)) The amended standard levels in that document were submitted in a joint recommendation (the ''November 2022 Joint Recommendation'') [3] by the American Council for an Energy-Efficient Economy (''ACEEE''), Appliance Standards Awareness Project (''ASAP''), National Electrical Manufacturers Association (''NEMA''), Natural Resources Defense Council (''NRDC''), Northwest Energy Efficiency Alliance (''NEEA''), Pacific Gas & Electric Company (''PG&E''), San Diego Gas & Electric (''SDG&E''), and Southern California Edison (''SCE''), hereinafter referred to as ''the Electric Motors Working Group.'' In a letter comment submitted December 12, 2022, the New York State Energy Research and Development Authority (''NYSERDA'') expressed its support of the November 2022 Joint Recommendation and urged DOE to implement it in a timely manner. DOE has determined that the November 2022 Joint Recommendation complies with the requirements of EPCA for issuance of a direct final rule. (42 U.S.C. 6295(p)(4)(A)(i))

In accordance with these and other statutory provisions discussed in this document, DOE proposes new and amended energy conservation standards for electric motors. The proposed standards, which are expressed in full-load efficiency, are shown in Table I.1, Table I.2 and Table I.3.

TABLE I.1—PROPOSED NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....
550/410	95.8	96.2	96.2	96.2	.....	.....	.....	.....
600/447	95.8	96.2	96.2	96.2	.....	.....	.....	.....
650/485	95.8	96.2	96.2	96.2	.....	.....	.....	.....
700/522	95.8	96.2	96.2	96.2	.....	.....	.....	.....
750/559	95.8	96.2	96.2	96.2	.....	.....	.....	.....

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 C was re-designated Part A–1.

[3] Joint comment response to the published Notification of a webinar and availability of preliminary technical support document; *https://www.regulations.gov/comment/EERE-2020-BT-STD-0007-0035.*

TABLE I.2—PROPOSED NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY STANDARD FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

TABLE I.3—PROPOSED NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY SPECIALIZED FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	74.0	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	.....	.....
15/11	90.2	89.5	91.0	91.0	.....	.....	.....	.....
20/15	90.2	90.2	91.0	91.0	.....	.....	.....	.....

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 electric motors.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C [4] of EPCA added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency of certain types of industrial equipment, including electric motors, the subject of this proposed rule. (42 U.S.C. 6311(1)(A)). The Energy Policy Act of 1992 (''EPACT 1992'') (Pub. L. 102–486 (Oct. 24, 1992)) further amended EPCA by establishing energy conservation standards and test procedures for certain commercial and industrial electric motors that are manufactured alone or as a component of another piece of equipment. In December 2007, Congress enacted the Energy Independence and Security Act of 2007 (''EISA 2007'') (Pub. L. 110–140 (Dec. 19, 2007)). Section 313(b)(1) of EISA 2007 updated the energy conservation standards for those electric motors already covered by EPCA and established energy conservation standards for a larger scope of motors not previously covered by standards. (42 U.S.C. 6313(b)(2)) EISA 2007 also revised certain statutory definitions related to electric motors. *See* EISA 2007, sec. 313 (amending statutory definitions related to electric motors at 42 U.S.C. 6311(13)).

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 include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314),

[4] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42; U.S.C. 6296).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6316(a) (applying the preemption waiver provisions of 42 U.S.C. 6297))

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. 6314(a), 42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)) The DOE test procedures for electric motors appear at title 10 of the Code of Federal Regulations (''CFR'') part 431, subpart B, appendix 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 notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1))

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including electric motors. 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. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard: (1) for certain products, including electric motors, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, 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. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered 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. 6316(a); 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 products 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. 6316(a); 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 such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)(2))

Finally, EISA 2007 amended EPCA, in relevant part, to grant DOE authority to issue a final rule (*i.e.,* a ''direct final rule'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, that contains recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)) Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly-submitted recommendation for an energy or water conservation standard satisfies 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable.

The direct final rule must be published simultaneously with a NOPR that proposes an energy or water conservation standard that is identical

to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) Based on the comments received during this period, the direct final rule will either become effective, or DOE will withdraw it not later than 120 days after its issuance if (1) one or more adverse comments is received, and (2) DOE determines that those comments, when viewed in light of the rulemaking record related to the direct final rule, provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o), 42 U.S.C. 6313(a)(6)(B), or any other applicable law. (42 U.S.C. 6295(p)(4)(C)) Receipt of an alternative joint recommendation may also trigger a DOE withdrawal of the direct final rule in the same manner. *Id.* After withdrawing a direct final rule, DOE must proceed with the notice of proposed rulemaking published simultaneously with the direct final rule and publish in the **Federal Register** the reasons why the direct final rule was withdrawn. *Id.*

Typical of other rulemakings, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, the substance of any adverse comment(s) received will be weighed against the anticipated benefits of the jointly-submitted recommendations and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that, to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

B. Background

In the May 2020 Early Assessment Review RFI, DOE stated that it was initiating an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for electric motors and sought information related to that effort. Specifically, DOE sought data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of the foregoing. 85 FR 30878, 30879.

On March 2, 2022, DOE published the preliminary analysis for electric motors. 87 FR 11650 (''March 2022 Preliminary Analysis''). In conjunction with the March 2022 Preliminary Analysis, DOE published a technical support document (''March 2022 Prelim TSD'') which presented the results of the in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine equipment price; (3) energy use; (4) life cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The results presented included the current scope of electric motors regulated at 10 CFR 431.25, in addition to an expanded scope of motors, including electric motors above 500 horsepower, air-over electric motors, and small, non-small-electric-motor, electric motors (''SNEM''). *See* Chapter 2 of the March 2022 Prelim TSD.

By letter dated on November 15, 2022, DOE received a joint recommendation for energy conservation standards for electric motors (''November 2022 Joint Recommendation''). The November 2022 Joint Recommendation represented the motors industry, energy efficiency organizations and utilities (collectively, ''the Electric Motors Working Group'').[5] The November 2022 Joint Recommendation addressed energy conservation standards for medium electric motors that are 1–750 hp and polyphase, and air-over medium electric motors. On December 9, 2022, DOE received a supplemental letter to the November 2022 Joint Recommendation from the Electric Motors Working Group. The supplemental letter provided additional guidance on the recommended levels for open medium electric motors rated 100 hp to 250 hp, and a recommended compliance date for standards presented in the November 2022 Joint Recommendation. A summary of the specific recommendations contained in the November 2022 Joint Recommendation may be found in the direct final rule published elsewhere in this **Federal Register**.

After carefully considering the November 2022 Joint Recommendation and supplement for amending the energy conservation standards for electric motors submitted by the Electric Motors Working Group, DOE has determined that these recommendations are in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule.

[5] The members of the Electric Motors Working Group included ACEEE, ASAP, NEMA, NRDC, NEEA, PG&E, SDG&E, and SCE.

More specifically, these recommendations comprise a statement submitted by interested persons who are fairly representative of relevant points of view on this matter. In appendix A to subpart C of 10 CFR part 430 (''appendix A''), DOE explained that to be ''fairly representative of relevant points of view,'' the group submitting a joint statement must, where appropriate, include larger concerns and small business in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.'' Section 10 of appendix A. In reaching this determination, DOE took into consideration the fact that the Joint Recommendation was signed and submitted by a broad cross-section of interests, including a manufacturers' trade association, environmental and energy-efficiency advocacy organizations, and electric utility companies. NYSERDA, a state organization, also submitted a letter supporting the Joint Recommendation. DOE notes that these organizations include the relevant points of view specifically identified by Congress: manufacturers of covered products, States, and efficiency advocates. (42 U.S.C. 6295(p)(4)(A))

DOE has evaluated the November 2022 Joint Recommendation and believes that it meets the EPCA requirements for issuance of a direct final rule. As a result, DOE published a direct final rule establishing energy conservation standards for electric motors elsewhere in this **Federal Register**. If DOE receives adverse comments that may provide a reasonable basis for withdrawal and withdraws the direct final rule, DOE will consider those comments and any other comments received in determining how to proceed with this proposed rule.

For further background information on these proposed standards and the supporting analyses, please see the direct final rule published elsewhere in this **Federal Register**. That document, and the accompanying technical support document (''TSD''), include additional discussion of the EPCA requirements for promulgation of energy conservation standards; the history of the standards rulemaking for electric motors; and information on the test procedures used to measure the energy

efficiency of electric motors. Those documents also contain an in-depth discussion of the analyses conducted in support of this proposed rulemaking, the methodologies DOE used in conducting those analyses, and the analytical results.

III. Proposed Standards

A. Benefits and Burdens of TSLs Considered for Electric Motor Standards

Table III.1 and Table III.2 summarize the quantitative impacts estimated for each TSL for electric motors. The national impacts are measured over the lifetime of electric motors purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results.

TABLE III.1—SUMMARY OF ANALYTICAL RESULTS FOR ELECTRIC MOTORS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings				
Quads	0.1	3.0	10.4	23.6
Cumulative FFC Emissions Reduction				
CO_2 (*million metric tons*)	4.42	91.69	319.24	725.80
CH_4 (*thousand tons*)	32.75	690.10	2,379.75	5,415.99
N_2O (*thousand tons*)	0.04	0.82	2.90	6.59
NO_X (*thousand tons*)	7.13	148.74	516.00	1,173.58
SO_2 (*thousand tons*)	1.71	35.12	122.75	278.95
Hg (*tons*)	0.01	0.23	0.80	1.82
Present Value of Benefits and Costs (3% discount rate, billion 2021$)				
Consumer Operating Cost Savings	0.51	8.82	34.86	73.26
Climate Benefits *	0.19	3.14	13.49	30.07
Health Benefits **	0.33	5.72	23.16	51.90
Total Benefits †	1.04	17.68	71.50	155.23
Consumer Incremental Product Costs ‡	0.18	1.35	39.70	84.56
Consumer Net Benefits	0.33	7.47	−4.85	−11.30
Total Net Benefits	0.85	16.33	31.80	70.67
Present Value of Benefits and Costs (7% discount rate, billion 2021$)				
Consumer Operating Cost Savings	0.21	2.95	13.44	27.14
Climate Benefits *	0.19	3.14	13.49	30.07
Health Benefits **	0.12	1.76	8.19	18.13
Total Benefits †	0.53	7.85	35.11	75.34
Consumer Incremental Product Costs ‡	0.10	0.72	21.03	44.80
Consumer Net Benefits	0.11	2.23	−7.60	−17.67
Total Net Benefits	0.43	7.13	14.08	30.54

Note: This table presents the costs and benefits associated with electric motors shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for NO_X and SO_2) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. *See* section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

TABLE III.2—SUMMARY OF ANALYTICAL RESULTS FOR ELECTRIC MOTOR TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Industry NPV (*million 2021$*) (No-new-standards case INPV = 5,023)	4,896–4,899	4,690–4,720	3,659–4,681	(6,066)–(3,840)
Industry NPV (*% change*)	(2.5)	(6.6)–(6.0)	(27.2)–(6.8)	(220.8)–(176.4)

TABLE III.2—SUMMARY OF ANALYTICAL RESULTS FOR ELECTRIC MOTOR TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
Consumer Average LCC Savings (2021$)				
RU1	N/A	N/A	−101.8	−276.4
RU2	N/A	N/A	−336.9	−309.4
RU3	N/A	N/A	−916.7	−1,439.6
RU4	N/A	567.1	567.1	−2,541.1
RU5	N/A	N/A	−945.5	−5,257.2
RU6	2,550.1	2,550.1	−2,287.8	−6,710.3
RU7	57.6	57.6	−39.2	−156.5
RU8	472.4	472.4	−160.8	−105.5
RU9*	.....	.....	−930.5	−1,795.0
RU10	608.8	930.7	930.7	−1,846.6
RU11	49.9	49.9	2.5	−153.2
Shipment-Weighted Average**	159.8	337.4	−196.2	−404.2
Consumer Simple PBP (Years)				
RU1	N/A	N/A	16.7	20.3
RU2	N/A	N/A	15.4	11.9
RU3	N/A	N/A	30.2	20.6
RU4	N/A	4.1	4.1	18.1
RU5	N/A	N/A	11.8	17.7
RU6	3.7	3.7	9.6	12.6
RU7	4.0	4.0	6.5	9.0
RU8	1.6	1.6	5.9	6.1
RU9*	.....	.....	9.0	10.6
RU10	6.1	4.9	4.9	10.1
RU11	4.1	4.1	5.6	7.9
Shipment-Weighted Average**	3.8	3.9	15.6	16.3
Percent of Consumers that Experience a Net Cost				
RU1	N/A	N/A	64.1	95.9
RU2	N/A	N/A	82.2	75.0
RU3	N/A	N/A	88.4	90.5
RU4	N/A	20.2	20.2	89.1
RU5	N/A	N/A	66.9	89.0
RU6	2.1	2.1	58.3	83.2
RU7	10.3	10.3	62.9	80.7
RU8	0.9	0.9	73.9	64.5
RU9*	.....	.....	99.9	96.4
RU10	6.3	11.7	11.7	79.0
RU11	32.1	32.1	53.4	74.5
Shipment-Weighted Average**	10.9	14.9	70.6	86.3

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* No impact because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 for RU9.
** Weighted by shares of each equipment class in total projected shipments in 2027 for impacted consumers.

DOE first considered TSL 4, which represents the max-tech efficiency levels. At this level, DOE expects that all equipment classes would require 35H210 silicon steel and die-cast copper rotors. DOE estimates that approximately 0.34 percent of annual shipments across all electric motor equipment classes currently meet the max-tech efficiencies required. TSL 4 would save an estimated 23.6 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be −$17.67 billion using a discount rate of 7 percent, and −$11.30 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 725.80 Mt of CO_2, 278.95 thousand tons of SO_2, 1,173.58 thousand tons of NO_X, 1.82 tons of Hg, 5,415.99 thousand tons of CH_4, and 6.59 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 $30.07 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $18.13 billion using a 7-percent discount rate and $51.90 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 $30.54 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $70.67 billion.

At TSL 4, for the largest equipment class group and horsepower ranges, which are represented by RU1 and RU2, which together represent approximately 90 percent of annual shipments, there is a life cycle cost savings of −$276.4 and −$309.4 and a payback period of 20.3 years and 11.9 years, respectively. For these equipment classes, the fraction of customers experiencing a net LCC cost is 95.9 percent and 75.0 percent due to increases in total installed cost of $434.7 and $1,003.0, respectively. Overall, for the remaining equipment class groups

and horsepower ranges, a majority of electric motor consumers (84.5 percent) would experience a net cost and the average LCC savings would be negative for all remaining equipment class groups and horsepower ranges.

At TSL 4, the projected change in INPV ranges from a decrease of $11,090 million to a decrease of $8,863 million, which corresponds to decreases of 220.8 percent and 176.4 percent, respectively. DOE estimates that industry must invest $13,516 million to comply with standards set at TSL 4. The significant increase in product and capital conversion costs is because DOE assumes that electric motor manufacturers will need to use die-cast copper rotors for most, if not all, electric motors manufactured to meet this TSL. This technology requires a significant level of investment because almost all existing electric motor production machinery would need to be replaced or significantly modified. Based on the shipments analysis used in the NIA, DOE estimates that approximately 0.3 percent of all electric motor shipments will meet the efficiency levels required at TSL 4, in the no-new-standards case in 2027, the compliance year of new and amended standards.

The Secretary concludes that at TSL 4 for electric motors, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions are outweighed by the negative NPV of consumer benefits, economic burden on many consumers, and the impacts on manufacturers, including the extremely large conversion costs, profit margin impacts that will result in a negative INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL. A majority of electric motor consumers (86.3 percent) would experience a net cost and the average LCC savings for each representative unit DOE examined is negative. In both manufacturer markup scenarios, INPV is negative at TSL 4, which implies that manufacturers would never recover the conversion costs they must make to produce electric motors at TSL 4. Consequently, the Secretary concludes that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents a level corresponding to the IE4 level, except for AO-polyphase specialized frame size electric motors, where it corresponds to a lower level of efficiency (*i.e.,* NEMA Premium level). TSL 3 would save an estimated 10.4 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be −$7.60 billion using a discount rate of 7 percent, and −$4.85 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 319.24 Mt of CO_2, 122.75 thousand tons of SO_2, 516.00 thousand tons of NO_X, 0.80 tons of Hg, 2,379.75 thousand tons of CH_4, and 2.90 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 $13.49 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is 8.19 billion using a 7-percent discount rate and $23.16 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 $14.08 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $31.80 billion.

At TSL 3, for the largest equipment class group and horsepower ranges, which are represented by RU1 and RU2, there is a life cycle cost savings of −$101.8 and −$336.9 and a payback period of 16.7 and 15.4, respectively.[6] For these equipment classes, the fraction of customers experiencing a net LCC cost is 64.1 percent and 82.2 percent due to increases in total installed cost of $171.3 and $690.5, respectively. Overall, for the remaining equipment class groups and horsepower ranges, a majority of electric motor consumers (55.5 percent) would experience a net cost and the shipments-weighted average LCC savings would be negative for all remaining equipment class groups and horsepower ranges.

At TSL 3, the projected change in INPV ranges from a decrease of $1,364 million to a decrease of $342 million, which correspond to decreases of 27.2 percent and 6.8 percent, respectively. DOE estimates that industry must invest $1,618 million to comply with standards set at TSL 3. Based on the shipments analysis used in the NIA, DOE estimates that approximately 13.3 percent of all electric motor shipments will meet or exceed the efficiency levels required at TSL 3, in the no-new-standards case in 2027, the compliance year of new and amended standards.

The Secretary concludes that at TSL 3 for electric motors, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions are outweighed by the negative NPV of consumer benefits, economic burden on many consumers, and the impacts on manufacturers, including the large conversion costs, profit margin impacts that could result in a large reduction in INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL. A majority of electric motor consumers (70.6 percent) would experience a net cost and the average LCC savings would be negative. The potential reduction in INPV could be as high as 27.2 percent. Consequently, the Secretary concludes that TSL 3 is not economically justified.

DOE then considered TSL 2, the standard levels recommended in the November 2022 Joint Recommendation by the Electric Motors Working Group. TSL 2 would also align with the EU Ecodesign Directive 2019/1781, which requires IE4 levels for 75–200 kW motors.[7] TSL 2 would save an estimated 3.0 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $2.23 billion using a discount rate of 7 percent, and $7.47 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 91.69 Mt of CO_2, 35.12 thousand tons of SO_2, 148.74 thousand tons of NO_X, 0.23 tons of Hg, 690.10 thousand tons of CH_4, and 0.82 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 2 is $3.14 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 2 is $1.76 billion using a 7-percent discount rate and $5.72 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is $7.13 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 2 is $16.33 billion.

At TSL 2, for the largest equipment class group and horsepower ranges, which are represented by RU1 and RU2, there would be no changes in the standards. Overall, for the remaining

[6] For RU1 and RU2, EL1 = EL2. See section IV.C.1.c. of the associated direct final rule published elsewhere in this **Federal Register**.

[7] In terms of standardized horsepowers, this would correspond to 100–250 hp when applying the from 10 CFR 431.25(k) (and new 10 CFR 431.25(q)).

equipment class groups and horsepower ranges, 14.9 percent of electric motor consumers would experience a net cost and the shipments-weighted average LCC savings would be positive for all remaining equipment class groups and horsepower ranges.

At TSL 2, the projected change in INPV ranges from a decrease of $333 million to a decrease of $303 million, which correspond to decreases of 6.6 percent and 6.0 percent, respectively. DOE estimates that industry must invest $468 million to comply with standards set at TSL 2. Based on the shipments analysis used in the NIA, DOE estimates that approximately 96.2 percent of all electric motor shipments will meet or exceed the efficiency levels required at TSL 2, in the no-new-standards case in 2027, the compliance year of new and amended standards.

After considering the analysis and weighing the benefits and burdens, the Secretary concludes that a standard set at TSL 2 for electric motors would be economically justified. At this TSL, the average LCC savings is positive. Only an estimated 14.9 percent of electric motor consumers experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. Notably, at TSL 2, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 6 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 2 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $3.14 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $5.72 billion (using a 3-percent discount rate) or $1.76 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the energy conservation standards, DOE notes that as compared to TSL 3 and TSL 4, TSL 2 has higher average LCC savings for consumers, significantly smaller percentages of electric motor consumers experiencing a net cost, a lower maximum decrease in INPV, and lower manufacturer conversion costs.

Although DOE considered amended standard levels for electric motors by grouping the efficiency levels for each equipment class groups and horsepower ranges into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For all equipment class groups and horsepower ranges, TSL 2 represents the maximum energy savings that does not result in the majority of consumers experiencing a net LCC cost. The ELs at the proposed TSL result in average positive LCC savings for all equipment class groups and horsepower ranges, 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 concluded they are economically justified, as discussed for TSL 2 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for electric motors at TSL 2. The proposed amended energy conservation standards for electric motors, which are expressed as full-load efficiency, are shown in Table I.1, Table I.2, and Table I.3.

B. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table III.3 shows the annualized values for electric motors under TSL 2, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the standards for electric motors is $62.1 million per year in increased equipment costs, while the estimated annual benefits are $254.8 million from reduced equipment operating costs, $164.8 million from GHG reductions, and $151.4 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $508.9 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards for electric motors is $71.0 million per year in increased equipment costs, while the estimated annual benefits are $463.6 million in reduced operating costs, $164.8 million from GHG reductions, and $300.7 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $858.2 million per year.

TABLE III.3—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR ELECTRIC MOTORS

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	463.6	405.1	542.9
Climate Benefits*	164.8	148.0	186.5
Health Benefits**	300.7	269.5	341.0
Total Benefits†	929.1	822.5	1070.4
Consumer Incremental Equipment Costs‡	71.0	73.7	73.0

TABLE III.3—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR ELECTRIC MOTORS—Continued

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Net Benefits	858.2	748.8	997.4
7% discount rate			
Consumer Operating Cost Savings	254.8	225.3	293.6
Climate Benefits* (3% discount rate)	164.8	148.0	186.5
Health Benefits**	151.4	137.1	169.5
Total Benefits†	571.0	510.4	649.6
Consumer Incremental Product Costs	62.1	63.8	63.9
Net Benefits	508.9	446.6	585.6

Note: This table presents the costs and benefits associated with electric motors 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 constant rate in the Primary Estimate, an increasing rate in the Low Net Benefits Estimate, and a declining rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. 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.

IV. Procedural Issues and Regulatory Review

The regulatory reviews conducted for this proposed rule, except for the Regulatory Flexibility Act discussed in section IV.A, are identical to those conducted for the direct final rule published elsewhere in this **Federal Register**. Please see the direct final rule for further details.

A. 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'') and a final regulatory flexibility analysis (''FRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this proposed rulemaking.

For manufacturers of electric motors, 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 electric motors is classified under NAICS 335312, ''Motor and Generator Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

EPCA requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1)) Additionally, under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing a direct final rule establishing energy conservation standards for electric motors These standard levels were submitted jointly to DOE on November 15, 2022, by groups representing manufacturers, energy and environmental advocates, and consumer groups (the Electric Motors Working Group).[8] This collective set of

[8] The Electric Motors working Group includes the American Council for an Energy-Efficient Economy (''ACEEE''), Appliance Standards Awareness Project

comments, the November 2022 Joint Recommendation, recommends specific energy conservation standards for electric motors that DOE has determined satisfy the EPCA requirements in 42 U.S.C. 6295(o).

2. Objectives of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C [9] of EPCA added by Pub. L. 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency of certain types of industrial equipment, including electric motors, the subject of this proposed rule. (42 U.S.C. 6311(1)(A)). DOE has previously established energy conservation standards for electric motors at 10 CFR 431.25. 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 notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)) DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including electric motors. Any new or amended standard for a covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)). As noted previously, DOE has the authority to issue a final rule (*i.e.,* a ''direct final rule'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, that contains recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4))

3. Description on Estimated Number of Small Entities Regulated

To estimate the number of companies that could be small business manufacturers of electric motors covered by this proposed rulemaking, DOE conducted a market survey using publicly available information. DOE's research involved DOE's publicly available Compliance Certification Database (''CCD''), industry trade association membership directories (including NEMA), and information from previous rulemakings. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and DOE working groups. DOE used information from these sources to create a list of companies that potentially manufacture electric motors covered by this proposed rulemaking. As necessary, DOE contacted companies to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE initially identified approximately 74 unique potential manufacturers of electric motors sold in the U.S that are covered by this proposed rulemaking. DOE screened out companies that had more than 1,250 employees or companies that were completely foreign owned and operated. Of the 74 manufacturers that potentially manufacture electric motors covered by this proposed rulemaking, DOE identified 11 companies that meet SBA's definition of a small business.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

Six major manufacturers supply approximately 90 percent of the market for electric motors covered by this proposed rulemaking. None of the major electric motor manufacturers covered by this proposed rulemaking are a small business. DOE is adopting new energy conservation standards for some AO electric motors and NEMA Design A and B electric motors between 500 hp and 75 hp. Additionally, DOE is amending energy conservation standards for NEMA Design A and B electric motors between 100 hp and 250 hp. Based on a review on the 11 small businesses' equipment offerings online, DOE was not able to identify any small business electric motor manufacturer that manufactures AO electric motors covered by this proposed rulemaking. Therefore, the remainder of the discussion in this section focuses on NEMA Design A and B electric motors between 100 hp and 250 hp and NEMA Design A and B electric motors between 500 hp and 750 hp that are covered by this proposed rulemaking.

Most of the identified small businesses primarily focus on selling application specific motors to OEMs (which are then embedded in the OEM's machinery). DOE estimates that approximately 97 percent of NEMA Design A and B electric motor sales covered by this proposed rulemaking are between 1–100 hp or 250–500 hp. DOE is not proposing to amend energy conservation standards for NEMA Design A and B electric motors between these horsepower ranges. Therefore, the majority of the NEMA Design A and B electric motors that are manufactured by the identified small businesses will not need to be remodeled in order to meet the proposed energy conservation standards.

The primary value added by these small businesses is creating electric motors that fit the application specific purpose that the OEMs require. This includes combining an electric motor with specific mechanic couplings, weatherproofing, or controls to suit the OEM's needs. Most small businesses manufacturer the motor housing and couplings, but do not manufacture the rotors and stators used in the electric motors they sell. While these small businesses may have to create new electric motor housings and/or couplings if the frame size or stack length of an electric motor changes in response to energy conservation standards, DOE was not able to identify any small businesses that own their own lamination dies sets and winding machines that are used to manufacture electric motor rotors and stators.

The primary investment that electric motor manufacturers will have to make is to upgrade or replace lamination die sets and winding machines and to have engineers develop equipment designs to create more efficient electric motors. These investments (both capital and product conversion costs) would only be for electric motor manufacturers that manufacture electric motor rotors and stators. Electric motor manufacturers that do not manufacture the rotors and

(''ASAP''), National Electrical Manufacturers Association (''NEMA''), Natural Resources Defense Council (''NRDC''), Northwest Energy Efficiency Alliance (''NEEA''), Pacific Gas & Electric Company (''PG&E''), San Diego Gas & Electric (''SDG&E''), and Southern California Edison (''SCE''). In a letter comment submitted December 12, 2022, the New York State Energy Research and Development Authority (''NYSERDA'') expressed its support of the November 2022 Joint Recommendation and urged DOE to implement it in a timely manner.

[9] For editorial reasons, upon codification in the U.S. Code, Part C was redesignaated Part A–1.

stators of an electric motor and instead purchase these components from other electric motor manufacturers would not need to purchase the machinery necessary to manufacture these components (*i.e.,* would not need to purchase costly lamination dies sets and winding machines) nor would they need to spend R&D efforts to develop electric motor designs to meet energy conservation standards. Instead, these small manufacturers might have to create new moldings for larger electric motor housings (if the size of the motor core increases in response to energy conservation standards).

DOE estimates the average small business would have to redesign four electric motor housings. DOE estimates this will cost approximately $50,000 in molding equipment per electric motor housing; $35,314 in engineering design effort per electric motor housing; [10] and $10,000 in testing costs per electric motor housing. Based on these estimates, each electric motor housing that will need to be redesigned would cost small businesses approximately $95,314, or $381,254 to redesign four electric motor housings per small business.

DOE displays in Table VI–1 the estimated average conversion costs per small business compared to the annual revenue for each small business. DOE used D&B Hoovers [11] to estimate the annual revenue for each small business. Manufacturers will have 4 years between publication of the direct final rule and compliance with the energy conservation standards. Therefore, DOE presents the estimated conversion costs and testing costs as a percent of the estimated 4 years of annual revenue for each small business.

TABLE VI–1—ESTIMATED CONVERSION COSTS AND ANNUAL REVENUE FOR EACH SMALL BUSINESS

Manufacturer	Total conversion and testing costs	Annual revenue	4-Years of annual revenue	Conversion costs as a % of 4-years of annual revenue
Small Business 1	$250,000	$78,000,000	$312,000,000	0.1
Small Business 2	250,000	60,000,000	240,000,000	0.1
Small Business 3	250,000	30,000,000	120,000,000	0.2
Small Business 4	250,000	29,000,000	116,000,000	0.2
Small Business 5	250,000	25,000,000	100,000,000	0.3
Small Business 6	250,000	23,000,000	92,000,000	0.3
Small Business 7	250,000	11,000,000	44,000,000	0.6
Small Business 8	250,000	10,000,000	40,000,000	0.6
Small Business 9	250,000	10,000,000	40,000,000	0.6
Small Business 10	250,000	4,600,000	18,400,000	1.4
Small Business 11	250,000	3,300,000	13,200,000	1.9
Average Small Business	2,750,000	283,900,000	1,135,600,000	0.2

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposal, represented by TSL 2, as recommended in the November 2022 Joint Recommendation. In reviewing alternatives to the rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings. TSL 1 achieves 97 percent lower energy savings and 96 percent lower consumer NPV compared to the energy savings and consumer NPV at TSL 2.

Based on the presented discussion, establishing standards at TSL 2 balances the benefits of the energy savings at TSL 2 with the potential burdens placed on electric motors manufacturers, including small business manufacturers. Accordingly, DOE does not adopt one of the other TSLs considered in the analysis.

Additional compliance flexibilities may be available through other means. Manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule until 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.

[10] DOE estimated that it would take approximately three months of engineering time to redesign each electric motor housing. Based on data from BLS, the mean hourly wage of an electrical engineer is $51.87 (*www.bls.gov/oes/current/oes172071.htm*) and wages comprise 70.5 percent of an employee's total compensation (*www.bls.gov/news.release/archives/ecec_12152022.pdf*).

$51.87 (hourly wage) ÷ 0.705 (wage as a percentage of total compensation) = $73.57 (fully burdened hourly labor rate).

$73.57 × 8 (hours in a workday) × 20 (working days in a month) × 3 (months) = $35,314.

[11] *app.avention.com.*

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).

B. Public Meeting

If DOE withdraws the direct final rule published elsewhere in this **Federal Register** pursuant to 42 U.S.C. 6295(p)(4)(C), DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

NEMA MG 1–2016 was previously approved for incorporation by reference in the section where it appears in this proposed rule and no change to the standard is made.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

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 stated in the preamble, DOE proposes to amend part 431 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.12 by adding, in alphabetical order, definitions for ''Specialized frame size'' and ''Standard frame size,'' to read as follows:

§ 431.12 Definitions.

* * * * *

Specialized frame size means an electric motor frame size for which the rated output power of the motor exceeds the motor frame size limits specified for standard frame size. Specialized frame sizes have maximum diameters corresponding to the following NEMA Frame Sizes:

Motor horsepower/standard kilowatt equivalent	Maximum NEMA frame diameters							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	48	.....	48	48	48	48	140	140
1.5/1.1	48	48	48	48	140	140	140	140
2/1.5	48	48	48	48	140	140	180	180
3/2.2	140	48	140	140	180	180	180	180
5/3.7	140	140	140	140	180	180	210	210
7.5/5.5	180	140	180	180	210	210	210	210
10/7.5	180	180	180	180	210	210	.....	.....
15/11	210	180	210	210	.....	.....	.....	.....
20/15	210	210	210	210	.....	.....	.....	.....

Standard frame size means a motor frame size that aligns with the specifications in NEMA MG 1–2016, section 13.2 for open motors, and NEMA MG 1–2016, section 13.3 for enclosed motors (incorporated by reference, see § 431.15).

* * * * *

■ 3. Amend § 431.25 by:

■ a. Revising paragraph (h) introductory text; and

■ b. Adding paragraphs (m) through (r).

The revision and additions read as follows:

§ 431.25 Energy conservation standards and effective dates.

* * * * *

(h) Each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an electric motor meeting the criteria in paragraph (g) of this section and with a power rating from 1 horsepower through 500 horsepower, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) on or after June 1, 2016, but before [*date 4 years after date of publication of final rule in the* **Federal Register**], shall have a nominal full-load efficiency of not less than the following:

* * * * *

(m) The standards in tables 8 through 10 of this section apply only to electric motors, including partial electric motors, that satisfy the following criteria:

(1) Are single-speed, induction motors;

(2) Are rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(3) Contain a squirrel-cage (MG 1) or cage (IEC) rotor;

(4) Operate on polyphase alternating current 60-hertz sinusoidal line power;

(5) Are rated 600 volts or less;

(6) Have a 2-, 4-, 6-, or 8-pole configuration;

(7) Are built in a three-digit or four-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent);

(8) Produce at least one horsepower (0.746 kW) but not greater than 750 horsepower (559 kW); and

(9) Meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N, NE, NEY, NY or H, HE, HEY, HY motor.

(n) Starting on [*date 4 years after date of publication of final rule in the* **Federal Register**], each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an electric motor meeting the criteria in paragraph (m) of this section and with a power rating from 1 horsepower through 750 horsepower, but excluding fire pump electric motors and air-over electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

TABLE 8 TO PARAGRAPH (n)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0

TABLE 8 TO PARAGRAPH (n)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 HZ—Continued

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....
550/410	95.8	96.2	96.2	96.2	.....	.....	.....	.....
600/447	95.8	96.2	96.2	96.2	.....	.....	.....	.....
650/485	95.8	96.2	96.2	96.2	.....	.....	.....	.....
700/522	95.8	96.2	96.2	96.2	.....	.....	.....	.....
750/559	95.8	96.2	96.2	96.2	.....	.....	.....	.....

(o) Starting on [*date 4 years after date of publication of final rule in the* **Federal Register**], each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an air-over electric motor meeting the criteria in paragraph (m) of this section and with a power rating from 1 horsepower through 250 horsepower, built in a standard frame size, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

TABLE 9 TO PARAGRAPH (o)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY STANDARD FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

(p) Starting on [*date 4 years after date of publication of final rule in the* **Federal Register**], each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an air-over electric motor meeting the criteria in paragraph (m) of this section and with a power rating from 1 horsepower through 20 horsepower, built in a specialized frame size, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

TABLE 10 TO PARAGRAPH (p)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY SPECIALIZED FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	74.0	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	.....	.....
15/11	90.2	89.5	91.0	91.0	.....	.....	.....	.....
20/15	90.2	90.2	91.0	91.0	.....	.....	.....	.....

(q) For purposes of determining the required minimum nominal full-load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepower or two kilowatt ratings listed in any table of energy conservation standards in paragraphs (n) through (p) through of this section, each such motor shall be deemed to have a listed horsepower or kilowatt rating, determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepowers shall be rounded up to the higher of the two horsepowers;

(2) A horsepower below the midpoint between the two consecutive horsepowers shall be rounded down to the lower of the two horsepowers; or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula 1 kilowatt = ($^{1}/_{0.746}$) horsepower. The conversion should be calculated to three significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraphs (q)(1) or (2) of this section, whichever applies.

(r) The standards in tables 8 through 10 of this section do not apply to the following electric motors exempted by the Secretary, or any additional electric motors that the Secretary may exempt:

(1) Component sets of an electric motor;

(2) Liquid-cooled electric motors;

(3) Submersible electric motors; and

(4) Inverter-only electric motors.

[FR Doc. 2023–10018 Filed 5–31–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1236

RIN 2590–AB10

Prudential Management and Operations Standards

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Housing Finance Agency (FHFA) is correcting inadvertent typographical errors in the preamble published in the **Federal Register** on May 4, 2023, regarding amendments to its regulation governing prudential management and operations standards (the regulation) to correct certain references made to the proposed rule that should have been references to the existing regulation that FHFA is proposing to amend. There are no corrections to the proposed amendments to the regulation text or to the appendix.

DATES: The comments due date remains July 3, 2023.

FOR FURTHER INFORMATION CONTACT: Clinton Jones, General Counsel, (202) 649–3006, *Clinton.Jones@fhfa.gov;* or Francisco Medina, Assistant General Counsel, (202) 649–3076, *Francisco.Medina@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

On May 4, 2023, FHFA published in the **Federal Register** a proposed rule to amend its regulation governing prudential management and operations standards, located at 12 CFR part 1236. *See* 88 FR 28433. The preamble discussion contains inadvertent typographical errors in reference to the regulation in sections II. and III.E. Sections II, and III.E. of the preamble discussions, therefore, should have referenced ''the regulation'' instead of ''the proposed rule''. There are no corrections to the proposed amendments to the regulation text in 12 CFR 1236 or to its appendix. For additional details on the proposed rulemaking, please see the May 4, 2023, **Federal Register** publication at 88 FR 28433.

II. Correction of Errors in the Preamble

In the proposed rule document FR Doc. 2023–09320 of May 4, 2023 (88 FR 28433), the following corrections are made:

1. On page 28433, in the right column, second full paragraph, lines 1, 13–14, the phrase ''The proposed rule'' is corrected to read ''The regulation''.

2. On page 28434, in the left column, in the first full paragraph, lines 1, 11, 14, 19–20, 24, the words ''proposed rule'' are corrected to read ''regulation''.

3. On page 28434, in the left column, in the second full paragraph, line 1, the words ''proposed rule'' are corrected to read ''regulation''.

4. On page 28436, in the left column, second full paragraph, line 18, the words ''proposed rule'' are corrected to read ''regulation''.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2023–11604 Filed 5–31–23; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0205; Notice No. 25–22–02–SC]

Special Conditions: Lufthansa Technik AG, Airbus Models A319–133 and A321–200 Series Airplanes; Supercapacitor Systems and Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Model A319–133 and A321–200 series airplanes. This airplane, as modified by Lufthansa Technik AG (Lufthansa), 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 the installation of an uninterruptible power supply (UPS) system based on supercapacitor technology. The current airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before July 17, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0205 using any of the following methods:

Federal eRegulations Portal: Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

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

FOR FURTHER INFORMATION CONTACT: Daniel Poblete, Electrical Systems, AIR–626A, Technical Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 3960 Paramount Blvd., Suite 100, Lakewood, CA 90712–4137; telephone and fax (562) 627–5335; email *daniel.d.poblete@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Background

On February 17, 2021, Lufthansa applied for a supplemental type certificate for the installation of a UPS system in the Model A319–133 and A321–200 series airplanes. The Airbus Model A319–133 and A321–200 series airplanes are twin-engine, transport category airplanes. The Airbus Model A319–133 airplane has a maximum passenger seating capacity of 160, and a maximum takeoff weight of 154,322 pounds. The Airbus Model A321–200 airplane has a maximum passenger seating capacity 230, and a maximum takeoff weight of 213,848 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Lufthansa must show that the Model A319–133 and A321–200 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A319–133 and A321–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A319–133 and A321–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of

the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A319–133 and A321–200 series airplanes will incorporate the following novel or unusual design features:

This design feature for this installation of a UPS system is based on supercapacitor technology.

Discussion

Currently, there are no regulatory or industry standards for supercapacitors and their installation on transport category airplanes. Supercapacitors are used to provide power to non-essential cabin equipment when the normal power source is interrupted for a short period of time. In this design, the supercapacitor UPS system will allow connected equipment to be provided back-up power if normal electrical power source is interrupted and remain operational such as during power transfers as well as provide transient voltage surge suppression should harmful high voltage transients occur. The UPS is only used for systems not critical to continued safe flight and landing.

Since the supercapacitor is being used as a high capacity electrical storage device and functions similarly to rechargeable batteries, the special conditions used for lithium batteries are appropriate for supercapacitor installations and the hazardous conditions that could be presented. These special conditions are necessary to assist in the testing and installation of this supercapacitor on the aircraft.

Special condition 1 requires that the supercapacitor installation be designed to preclude propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure. Special condition 1 is intended to ensure that the supercapacitor system is designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the supercapacitor designer. Therefore, other special conditions are intended to protect the airplane and its occupants if other failures occur.

Special conditions 2, 6, 8, and 9 are self-explanatory.

Special condition 3 makes it clear that the flammable fluid fire protection requirements of § 25.863 apply to supercapacitor installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Supercapacitors may contain an electrolyte that is a flammable fluid.

Special condition 4 requires that each supercapacitor installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring interconnection system (EWIS) components from corrosive fluids or gases that may escape in such a way as to cause a hazardous condition.

While special condition 4 addresses corrosive fluids and gases, special condition 5 addresses heat. Special condition 5 requires that each supercapacitor installation have provisions to prevent any hazardous effect on surrounding structure or adjacent systems, equipment or EWIS components, caused by the maximum amount of heat the supercapacitor installation can generate due to any failure of the supercapacitor installation or any of the individual supercapacitors. The means of meeting special conditions 4 and 5 may be the same, but the requirements are independent and address different hazards.

Special condition 7 requires that supercapacitor be disconnected or otherwise removed from its charging source without the need for crew intervention should the supercapacitor become overheated or fail in a manner that may create a safety hazard. This requirement applies to all supercapacitor installations and is not limited to those whose proper functioning is required for the safe operation of the airplane.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A319–133 and A321–200 series airplanes. Should Lufthansa apply at a later date for a change to the supplemental type certificate to include another model incorporating the same novel or unusual design feature included on Type Certificate No. A28NM, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus Models A319–133 and A321–200 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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 Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A319–133 and A321–200 series airplanes, as modified by Lufthansa Technik AG.

Each supercapacitor installation must:

1. Be designed to preclude the occurrence of uncontrolled increases in temperature or pressure under all foreseeable operating conditions to prevent fire and explosion.

2. Not emit explosive or toxic gasses, in normal operation or as the result of its failure that may accumulate in hazardous quantities in any area of the airplane.

3. Meet the requirements of § 25.863.

4. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring interconnection system (EWIS) components from corrosive fluids or gases that may escape to cause a hazardous condition.

5. Have provisions to prevent any hazardous effect on surrounding structure or adjacent systems, equipment, or EWIS components, caused by the maximum amount of heat it can generate during any failure including any individual supercapacitors.

6. Have a means to prevent overheating or overcharging of the supercapacitor.

7. Have a means to automatically disconnect it from its charging source in the event of an over-temperature condition or failure.

8. Have a monitoring and alerting feature that alerts the flightcrew when the capacity has fallen below acceptable levels if its function is required for safe operation of the airplane. The flightcrew alerting must be in accordance with the requirements of § 25.1322.

9. Have a means to prevent insufficient charging if required for safe operation of the airplane.

Note: A supercapacitor installation consists of the supercapacitor(s) and any protective, monitoring and alerting circuitry or hardware inside or outside of the Supercapacitor. This includes EWIS components as defined by § 25.1701. It also includes any venting or cooling system and packaging. For the purpose of these special conditions, a

supercapacitor and the supercapacitor installation is referred to as a supercapacitor.

Issued in Des Moines, Washington, on May 26, 2023.

Suzanne A. Masterson,

Acting Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–11682 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1046; Project Identifier AD–2023–00253–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. This proposed AD was prompted by a report of a crack at fuselage station (STA) 1640 frame web common to the lower hinge intercostal tee clip inboard and center holes of the upper fastener row. This proposed AD would require a maintenance records check for existing repairs at STA 1640, repetitive ultrasonic (UT) inspections for cracking of the frame web, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1046; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website: *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1046.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: *wayne.ha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1046; Project Identifier AD–2023–00253–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Wayne Ha, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: *wayne.ha@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of a 0.16-inch crack at STA 1640 frame web common to the lower hinge intercostal tee clip inboard and center holes of the upper fastener row on a 757–200 airplane with 27,754 flight cycles and 79,425 flight hours. The crack was found by an operator accomplishing a frame segment replacement as part of a repair following Boeing Service Bulletin 757–53A0108 inspections (which is required by AD 2020–20–10, Amendment 39–21266 (85 FR 63002, October 6, 2020) (AD 2020–20–10)). AD 2020–20–10 requires an inspection of the STA 1640 fuselage frame between S–11 and S–16 for existing frame repairs or replacements, a detailed inspection for any crack, nick, or gouge, and repetitive high frequency eddy current (HFEC) and low frequency eddy current (LFEC) inspections for cracking and repair. The FAA issued AD 2020–20–10 to address cracking of the fuselage frame at STA 1640, which could result in reduced structural integrity of the airplane.

A damage tolerance analysis showed that existing Maintenance Planning Data (MPD) tasks and the inspections specified in Boeing Alert Service Bulletin 757–53A0108 are not adequate to find any crack in the STA 1640 frame web area common to the lower hinge intercostal tee clip inboard and center holes of the upper fastener row. This STA 1640 frame web crack is attributed to fatigue caused by flight loads and pressurization of the fuselage with higher than predicted stresses at this location. Additionally, for airplanes with Aviation Partners Boeing (APB) blended or scimitar blended winglets installed in accordance with

Supplemental Type Certificate (STC) ST01518SE, the compliance times will be reduced by a factor of two compared to airplanes without these winglets. This condition could result in an undetected crack in the STA 1640 frame web common to the lower hinge intercostal tee clip inboard and center holes of the upper fastener row. Such cracking if not addressed, could result in the inability of a principal structural element to sustain limit loads which could adversely affect the structural integrity of the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022. This service information specifies procedures for a maintenance records check of the left and right side STA 1640 frame web between S–9 and S–20 for existing repair; repetitive UT inspections of the frame web for any cracks; and applicable on-condition actions. On-condition actions include repair.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–1046.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 309 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance records check	1 work-hour × $85 per hour = $85	$0	$85	$26,265.
Ultrasonic inspection	39 work-hour × $85 per hour = $3,315 per inspection cycle.	0	$3,315 per inspection cycle	$1,024,335 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–1046; Project Identifier AD–2023–00253–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022.

(d) Subject

Air Transport Association (ATA) of America Code: 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of a crack at fuselage station (STA) 1640 frame web common to the lower hinge intercostal tee clip inboard and center holes of the upper fastener row. This condition, if not addressed, could result in the inability of a principal structural element to sustain limit loads, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert

Requirements Bulletin 757–53A0121 RB, dated September 28, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0121, dated September 28, 2022, which is referred to in Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022, use the phrase ''the original issue date of Requirements Bulletin 757–53A0121 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) For airplanes with Aviation Partners Boeing (APB) blended or scimitar blended winglets installed in accordance with Supplemental Type Certificate (STC) ST01518SE: This AD requires dividing the applicable compliance times and repeat intervals specified in in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022, by a factor of two.

(i) 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-SACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: *wayne.ha@faa.gov.*

(k) 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) Boeing Alert Requirements Bulletin 757–53A0121 RB, dated September 28, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website: *myboeingfleet.com.*

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

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

Issued on May 11, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–11584 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1056; Project Identifier MCAI–2023–00179–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and A350–1041 airplanes. This proposed AD was prompted by reports that excessively deep spot faces on the front engine mounting bolt holes on the wing pylon were detected on the production line. This proposed AD would require a one-time inspection for clash (interference) of the three front engine mounting bolt holes on both the left and right wing pylons, and, depending on findings, accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1056; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1056.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1056; Project Identifier MCAI–2023–00179–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email *dat.v.le@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0026, dated January 30, 2023 (EASA AD 2023–0026) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and A350–1041 airplanes. The MCAI states that excessively deep spot faces have been detected on the production line on rib 1 at the level of the front engine mount bolting. This could cause possible integration issues between the pylon and the front engine mount, which could lead to interference damage. This condition, if not detected and corrected, could lead to a reduced fatigue life, which could adversely affect the structural integrity of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1056.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0026 specifies procedures for a one-time inspection for clash of the three pylon bolt holes at rib 1 (forward engine attachment on pylon), on both the left and right wing pylons, and applicable corrective actions. Corrective actions include installing the post-mod retention bracket assembly; accomplishing a detailed inspection and a high frequency eddy current (HFEC) inspection or a penetrant inspection on rib 1 for damage (cracks, scratches, or erosion of the protective coating); measuring the spot face depth and pylon thickness and obtaining and following instructions if incorrect spot face depth or pylon thickness at the spot face are found; and repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0026 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0026 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0026 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0026 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0026. Service information required by EASA AD 2023–0026 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1056 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
56 work-hours × $85 per hour = $4,760	$0	$4,760	$147,560

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × $85 per hour = $850	$10	$860

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–1056; Project Identifier MCAI–2023–00179–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and A350–1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0026, dated January 30, 2023 (EASA AD 2023–0026).

(d) Subject

Air Transport Association (ATA) of America Code: 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports that excessively deep spot faces on the front engine mounting bolt holes on the wing pylon were detected on the production line. The FAA is issuing this AD to address potential integration issues between the pylon and the front engine mount, which could lead to interference damage. The unsafe condition, if not addressed, could result in reduced fatigue life, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0026.

(h) Exceptions to EASA AD 2023–0026

(1) Where EASA AD 2023–0026 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the applicability of EASA AD 2023–0026 refers to serial numbers, replace the text ''the SBs, as defined in this AD'' with ''Airbus Service Bulletin A350–54–P006, Revision 1, dated December 20, 2022; and Airbus Service Bulletin A350–54–P008, dated December 20, 2022.''

(3) Where paragraph (2) of EASA AD 2023–0026 refers to ''discrepancies,'' for this AD discrepancies are any clash (interference) between the lockplate support and rib 1 or between the pylon bolt and the engine mount; damage (cracks, scratches, or erosion of the protective coating); and incorrect spot face depth or pylon thickness at the spot face.

(4) Where paragraph (2) of EASA AD 2023–0026 specifies to ''contact Airbus for approved instructions for corrective action and accomplish those instructions accordingly'' if discrepancies are detected; for this AD if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0026.

(6) Where the service information referenced in EASA AD 2023–0026 specifies to report inspection results or findings, this AD requires submitting information only if damage (cracks) or incorrect spot face depth or pylon thickness at the spot face are found during any inspection required by EASA AD 2023–0026. Operators are required to submit certain information as part of obtaining any corrective actions approved by Airbus SAS's European Aviation Safety Agency (EASA) Design Organization Approval (DOA).

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in

paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

(j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0026, dated January 30, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0026, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website: *ad.easa.europa.eu.*

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

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

Issued on May 25, 2023.

Michael Linegang,

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

[FR Doc. 2023–11591 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1047; Project Identifier MCAI–2022–01601–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This proposed AD was prompted by reports of the main landing gear (MLG) aft door not opening when using the alternate extension system. This proposed AD would require a one-time inspection of the spring box assembly, repetitive inspections of the cam assembly and alternate release cable assembly, corrective actions if necessary, and a replacement of certain alternate release cable assemblies. In addition, this proposed AD would also require certain aircraft maintenance manuals tasks when installing the cam assembly or alternate release cable assembly. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1047; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email: *thd@dehavilland.com;* website: *dehavilland.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1047; Project Identifier MCAI–2022–01601–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–69, dated December 16, 2022 (Transport Canada AD CF–2022–69) (also referred to as the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes. The MCAI states that several instances occurred where the maintenance crew using the MLG alternate extension system did not open the MLG aft doors. An investigation found that the associated cam assembly failed due to a fractured cam assembly lever, a damaged spring box assembly, or a broken alternate release cable assembly.

The FAA is proposing this AD to address possible cam assembly, spring box assembly, and alternate release cable assembly failures. The unsafe condition, if not addressed, could result in asymmetric main landing gear configuration at landing, and a runway excursion.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1047.

Related Service Information Under 1 CFR Part 51

The FAA reviewed De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019. This service information specifies procedures for performing a general visual inspection of the cam assembly (part number (P/N) 48510–5) for discrepancies (such as the cam assembly does not return to its original rested position, or signs of an increased gap between the roller and the cam guide); a general visual inspection of the alternate release cable assembly (or uplock cable assembly) (P/N 48503–3) for discrepancies (such as a broken cable); a one-time general visual inspection for discrepancies (such as any bend on the plunger) of the left and right MLG spring box assembly (P/N 48504–1); and corrective actions. Corrective actions include replacing the cam assembly with a new cam assembly, replacing the alternate release cable assembly with a new alternate release cable assembly, and replacing the spring box assembly with a new spring box assembly.

The FAA also reviewed De Havilland Aircraft of Canada Limited Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022. This service information specifies procedures for replacing the left and right MLG alternate release cable assemblies, P/N 48503–3, with the redesigned alternate release cable assembly, P/N 48503–5.

The FAA also reviewed De Havilland Aircraft of Canada Limited Temporary Revision 32–603, dated December 1, 2022, which describes aircraft maintenance manual (AMM) TASK 32–34–16–400–804, ''Installation of the Alternate Extension Cables—Center Fuselage to Nacelle.''

The FAA also reviewed AMM TASK 32–34–26–400–801, ''Installation of the MLG Alternate-Extension Cam-Mechanism Assembly'' of Subject 32–34–26, ''Cam Mechanism Assembly—MLG Alternative Extension'' in Chapter 32, ''Landing Gear,'' of the De Havilland Aircraft of Canada Limited Aircraft Maintenance Manual, Revision 76, dated March 5, 2022.

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit the installation of affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 55 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 5 work-hour × $85 per hour = $425	$4,780	Up to $5,205	Up to $286,275.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required action. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
4.5 work-hours × $85 per hour = $383	$41,328	$41,711

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2023–1047; Project Identifier MCAI–2022–01601–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes, certificated in any category, having serial numbers 4001 and 4003 through 4633 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of the main landing gear (MLG) aft door not opening when using the alternate extension system. The FAA is issuing this AD to address possible cam assembly, spring box assembly, and alternate release cable assembly failures. The unsafe condition, if not addressed, could result in asymmetric MLG configuration at landing, and a runway excursion.

(f) Compliance

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

(g) One-Time Inspection

Within 2,400 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do a one-time general visual inspection for discrepancies on the left and right MLG spring box assemblies (part number (P/N) 48504–1), in accordance with Section 3.B., Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–159, dated June 28, 2019. If any discrepancy is discovered in the spring box assembly, before further flight, replace with a new spring box assembly, in accordance with Section 3.B. Part B, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–159, dated June 28, 2019.

(h) Repetitive Inspections

(1) Within 2,400 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do a general visual inspection for discrepancies of the cam assemblies (P/N 48510–5) on the left and right MLG, in accordance with Section 3.B. Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–159, dated June 28, 2019. Thereafter, repeat the inspection at intervals not to exceed 2,400 flight hours or 12 months, whichever occurs first. If any discrepancy is discovered in the cam assembly, before further flight, replace with a new cam assembly, in accordance with Section 3.B. Part B, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–159, dated June 28, 2019.

(2) Within 2,400 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do a general visual inspection for discrepancies of the alternate release cable assemblies (P/N 48503–3) on the left and right MLG, in accordance with Section 3.B., Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–159, dated June 28, 2019. Thereafter, repeat the inspection at intervals not to exceed 2,400 flight hours or 12 months, whichever occurs first. If any discrepancy is found, before further flight, replace the alternate release cable assembly with a redesigned alternate release cable assembly P/N 48503–5, in accordance with in accordance with Section 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022. Accomplishing the replacement required by paragraph (i) of this AD terminates the inspections required by this paragraph.

(i) Replacement

Within 5,500 flight hours or 30 months, whichever occurs first, after the effective date of this AD, replace the left and right MLG alternate release cable assemblies, P/N 48503–3, with the redesigned alternate release cable assembly, P/N 48503–5, in accordance with Section 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–32–172, dated August 16, 2022, including

Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022.

(j) Maintenance Task Requirement

As of the effective date of this AD, when installing an MLG alternate extension system cam assembly and when installing an alternate release cable assembly, the following aircraft maintenance manual (AMM) tasks must be used, as applicable:

(1) For the alternate release cable assembly: AMM TASK 32–34–16–400–804, ''Installation of the Alternate Extension Cables—Center Fuselage to Nacelle'' as specified in De Havilland Aircraft of Canada Limited Temporary Revision 32–603, dated December 1, 2022.

(2) For the MLG alternate extension system cam assembly: AMM TASK 32–34–26–400–801, ''Installation of the MLG Alternate-Extension Cam-Mechanism Assembly'' of Subject 32–34–26, ''Cam Mechanism Assembly—MLG Alternative Extension'' in Chapter 32, ''Landing Gear,'' of the De Havilland Aircraft of Canada Limited Aircraft Maintenance Manual, Revision 76, dated March 5, 2022.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, an alternate release cable assembly P/N 48503–3.

(l) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the East Certification Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (m)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, East Certification Branch, FAA; or Transport Canada; or De Havilland Aircraft of Canada Limited's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Additional Information

(1) Refer to Transport Canada AD CF–2022–69, dated December 16, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1047.

(2) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019.

(ii) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022.

Note 1 to paragraph (n)(2)(ii): De Havilland issued De Havilland Service Bulletin 84–32–172, dated August 16, 2022, with Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022, attached as one ''merged'' file for the convenience of affected operators.

(iii) De Havilland Aircraft of Canada Limited Temporary Revision 32–603, dated December 1, 2022.

(iv) AMM TASK 32–34–26–400–801, ''Installation of the MLG Alternate-Extension Cam-Mechanism Assembly,'', of Subject 32–34–26, ''Cam Mechanism Assembly—MLG Alternative Extension'' in Chapter 32, ''Landing Gear,'' of the De Havilland Aircraft of Canada Limited Aircraft Maintenance Manual, Revision 76, dated March 5, 2022.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email: *thd@dehavilland.com;* website: *dehavilland.com.*

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

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

Issued on May 25, 2023.

Michael Linegang,

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

[FR Doc. 2023–11590 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

[REG–110412–23]

RIN 1545–BQ81

Additional Guidance on Low-Income Communities Bonus Credit Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed rules concerning the low-income communities bonus energy investment credit program established pursuant to the Inflation Reduction Act of 2022. Applicants investing in certain solar and wind powered-electricity generation facilities may apply for an allocation of environmental justice solar and wind capacity limitation to increase the amount of an energy investment credit for the taxable year in which the facility is placed in service. This document describes proposed definitions and requirements that would be applicable for the program allocating the calendar year 2023 capacity limitation, which also would inform guidance applicable for future program years. The proposed rules would affect applicants seeking allocations of environmental justice solar and wind capacity limitation.

DATES: Written or electronic comments must be received by June 30, 2023.

ADDRESSES: Stakeholders are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–110412–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted, whether electronically or on paper, to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–110412–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed rules, Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of written comments,

Vivian Hayes at (202) 317–5306 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Section 13103 of Public Law 117–169, 136 Stat. 1818, 1921 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new section 48(e) to the Internal Revenue Code (Code) to increase the amount of the energy investment credit determined under section 48(a) (section 48 credit) with respect to eligible property that is part of a qualified solar and wind facility that is awarded an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation). This document contains proposed definitions and rules relating to the allocation of Capacity Limitation for calendar year 2023 (2023 Capacity Limitation).

The amount of the energy investment credit determined under the section 48 credit for a taxable year is generally calculated by multiplying the basis of each energy property placed in service during that taxable year by the energy percentage (as defined in section 48(a)(2)). Section 48(e) increases the section 48 credit by increasing the energy percentage used to calculate the amount of the section 48 credit (section 48(e) Increase) in the case of qualified solar and wind facilities that receive an allocation of Capacity Limitation. The term ''qualified solar and wind facility'' is defined in section 48(e)(2) to mean any facility that (i) generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) is described in at least one of four categories in section 48(e)(2)(A)(iii) (and in part II of this Background).

As described in part III of this Background, section 48(e)(4)(A) directs the Secretary of the Treasury or her delegate (Secretary) to ''provide procedures to allow for an efficient allocation'' of Capacity Limitation to qualified solar and wind facilities. Later this year, the Treasury Department and the IRS expect to issue details for the program applicable for the calendar year 2023 Capacity Limitation, covering a comprehensive set of procedures and rules for applicants. The majority of the information regarding the program's details will be procedural rules. Some of the information that the Treasury Department and the IRS intend to include, however, will provide more substantive details that cover threshold definitions and requirements that must be established to make allocations efficiently and effectively. Those aspects of the program's details are the subject of this notice of proposed rulemaking. The Treasury Department and the IRS expect that final guidance will be reflected in regulations.

II. Four Categories of Qualified Solar and Wind Facilities

Depending on the category of the facility, an allocation of Capacity Limitation may result in a section 48(e) Increase equal to either 10 percentage points or 20 percentage points. Section 48(e)(1)(A)(i) provides for a section 48(e) Increase of 10 percentage points for eligible property that is located in a low-income community, as defined in section 45D(e) (Category 1 facility), or on Indian land, as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)) (Category 2 facility). Section 48(e)(1)(A)(ii) provides for a section 48(e) Increase of 20 percentage points for eligible property that is part of a qualified low-income residential building project (Category 3 facility) or a qualified low-income economic benefit project (Category 4 facility). Under section 48(e)(1)(A)(i), a Category 1 or Category 2 facility that also qualifies as a Category 3 or Category 4 facility is considered a Category 3 facility or Category 4 facility (as applicable).

Section 48(e)(2)(B) provides that a facility will be treated as part of a qualified low-income residential building project if such facility is installed on a residential rental building which participates in a covered housing program (as defined in § 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in § 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22)), or such other affordable housing programs as the Secretary may provide, and (ii) the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

Section 48(e)(2)(C) provides that a facility will be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved, or less than 80 percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

For a qualified low-income residential building project and a qualified low-income economic benefit project, section 48(e)(2)(D) provides that electricity acquired at a below-market rate will be considered a financial benefit.

III. Overview of Low-Income Communities Bonus Credit Program

Section 48(e)(4) directs the Secretary to establish a program, within 180 days of enactment of the IRA, to allocate amounts of Capacity Limitation to qualified solar and wind facilities. Notice 2023–17, 2023–10 I.R.B. 505, established the program under section 48(e) to allow amounts of Capacity Limitation to be allocated to qualified solar and wind facilities eligible for the section 48 credit (Low-Income Communities Bonus Credit Program).[1] Under section 48(e)(4)(C), the total annual Capacity Limitation that may be allocated under the Low-Income Communities Bonus Credit Program is 1.8 gigawatts of direct current capacity for each of the calendar years 2023 and 2024. Under section 48(e)(4)(D), if the annual Capacity Limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess is carried forward to the next year, but not beyond calendar year 2024.[2]

Consistent with Notice 2023–17, the Treasury Department and the IRS propose to reserve a portion of the total annual Capacity Limitation of 1.8 gigawatts of direct current capacity for each facility category for calendar year 2023 as follows:

[1] Notice 2023–17 describes several other definitions and requirements related to the Low-Income Communities Bonus Credit Program.

[2] Section 13702(a) of the IRA also enacted section 48E(h), which generally provides for a program similar to the Low-Income Communities Bonus Credit Program for calendar years after 2024. Section 48E(i) directs the Secretary to issue guidance regarding the implementation of section 48E not later than January 1, 2025. Any excess Capacity Limitation from calendar year 2024 may be carried forward and applied to the Capacity Limitation for calendar year 2025 under new section 48E(h)(4)(D)(ii). The Treasury Department and the IRS anticipate that operation of the Low-Income Communities Bonus Credit Program will inform the operation of the section 48E(h) program generally, as described in future guidance.

Category 1: Located in a Low-Income Community	700 megawatts.
Category 2: Located on Indian Land	200 megawatts.
Category 3: Qualified Low-Income Residential Building Project	200 megawatts.
Category 4: Qualified Low-Income Economic Benefit Project	700 megawatts.

The proposed rules in this document would supplement the guidance provided in Notice 2023–17 to outline the specific application procedures, additional allocation criteria, and applicable definitions, among other information, necessary to submit an application to request an allocation of the Capacity Limitation for calendar year 2023 under the Low-Income Communities Bonus Credit Program. The Treasury Department and the IRS request comments on these proposed definitions and requirements. The Treasury Department and the IRS also request comment on whether these proposed definitions and requirements should apply for purposes of the Low-Income Communities Bonus Credit Program for calendar year 2024 and the program to be established under section 48E(h) for calendar year 2025 and future years. The Treasury Department and the IRS anticipate further evaluating the program for 2023 to determine what further guidance may be helpful or necessary in the future.

Explanation of Proposed Rules

The proposed rules relate to specific definitions and requirements regarding the following topics: (1) the definition of facility based on single project factors; (2) the definition of ''in connection with'' to demonstrate what it means for energy storage technology to be considered part of eligible property of the qualified facility; (3) definitions of the terms ''financial benefit'' and ''electricity acquired at a below market rate'' under section 48(e)(2)(D), as well as a manner to apply such definitions, appropriately, to Category 3 facilities that are part of qualified low-income residential building projects and Category 4 facilities that are part of qualified economic benefit projects; (4) the definition of ''located in'' for relevant geographic criteria; (5) a rule for facilities placed in service prior to an allocation award; (6) reservations of Capacity Limitation allocation for applicant facilities that meet certain Additional Selection Criteria; (7) sub-reservations of Capacity Limitation allocation for facilities built in a low-income community; (8) application materials demonstrating facility viability in order to allow for an efficient allocation process; (9) documentation and attestations to be submitted when a facility is placed in service; and (10) post-allocation compliance including disqualification and recapture of section 48(e) Increases.

I. Proposed Definitions and Requirements

A. Definition of Facility

The term ''qualified solar and wind facility'' is defined in section 48(e)(2)(A) to mean any facility that (i) generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) is described in at least one of the four categories described in section 48(e)(2)(A)(iii) (Category 1, 2, 3, or 4). The Treasury Department and the IRS are concerned that some applicants may attempt to circumvent the less than 5-megawatt output limitation provided in section 48(e)(2)(A)(ii) by artificially dividing larger projects into multiple facilities. To prevent applicants from dividing larger projects that should be regarded as a single facility under section 48(e)(2)(A), solely for the purpose of the Low-Income Communities Bonus Credit Program, the Treasury Department and the IRS propose to aggregate into a single ''qualified solar and wind facility'' multiple facilities or energy properties of the same type (solar or wind) that are operated as part of a single project consistent with the single-project factors provided in section 7.01(2)(a) of Notice 2018–59, 2018–28 I.R.B. 196 or section 4.04(2) of Notice 2013–29, 2013–20 I.R.B. 1085, as applicable.

Therefore, the Treasury Department and the IRS propose to define a single qualified solar or wind facility as any facility that (i) generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) that has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) that is described in at least one of the four categories described in section 48(e)(2)(A)(iii) (Category 1, 2, 3, or 4). In addition, for purposes of determining allocations, administering the program fairly, and avoiding abuse, the Treasury Department and the IRS propose that multiple solar or wind energy properties or facilities that are operated as part of a single project would be aggregated and treated as a single facility. Whether multiple facilities or energy properties are operated as part of a single project would depend on the relevant facts and circumstances and would be evaluated based on the factors provided in section 7.01(2)(a) of Notice 2018–59 or section 4.04(2) of Notice 2013–29, as applicable.

B. Energy Storage Technology Installed in Connection With Solar and Wind Facility

Section 48(e)(3) defines ''eligible property'' to mean energy property that (i) is part of a wind facility described in section 45(d)(1) for which an election to treat the facility as energy property was made under section 48(a)(5) (wind facility), or (ii) is solar energy property described in section 48(a)(3)(A)(i) (solar energy property) or qualified small wind energy property described in section 48(a)(3)(A)(vi) (small wind energy property), including energy storage technology (as described in section 48(a)(3)(A)(ix)) ''installed in connection with'' such qualifying energy property. The Treasury Department and the IRS propose to define ''installed in connection with'' for energy storage technology to demonstrate what is required for such energy storage technology to be considered eligible property under section 48(e)(3).

Under the proposed definition energy storage technology would be ''installed in connection with'' other eligible property if both (1) the energy storage technology and other eligible property are considered part of a single qualified solar and wind facility because the energy storage technology and other eligible property are owned by a single legal entity, located on the same or contiguous pieces of land, have a common interconnection point, and are described in one or more common environmental or other regulatory permits; and (2) the energy storage technology is charged no less than 50 percent by the other eligible property. The Treasury Department and the IRS also propose to add a safe harbor, which would deem the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind facility (in kW alternating current) or solar facility (in kW direct current).

C. Financial Benefits for Category 3 and Category 4 Allocations

Section 48(e)(2)(D) provides that ''electricity acquired at a below market rate'' will not fail to be taken into account as a financial benefit. To clarify this language, the Treasury Department and the IRS propose definitions of the terms ''financial benefit'' and ''electricity acquired at a below market rate'' under section 48(e)(2)(D), as well as a manner to apply such definitions, appropriately, to qualified low-income residential building projects (section 48(e)(2)(B)) and qualified economic benefit projects (section 48(e)(2)(C)). The definitions and requirements would be different for an allocation in Category 3 (section 48(e)(2)(B)) and Category 4 (section 48(e)(2)(C)).

1. Financial Benefits for Qualified Low-Income Residential Building Projects

For a facility to be treated as part of a qualified low-income residential building project, section 48(e)(2)(B)(ii) provides that the financial benefits of the electricity produced by such facility must be allocated equitably among the occupants of the dwelling units of a residential rental building that participates in a covered housing program or other affordable housing program (qualified residential property). The Treasury Department and the IRS propose to reserve allocations under this category exclusively for applicants that would apply the financial benefits requirement under Category 3 in the following manner.

The Treasury Department and the IRS propose that financial benefit can be demonstrated through net energy savings as defined below. At least 50 percent of the financial value of net energy savings would be required to be equitably passed on to building occupants. This requirement would recognize that not all the financial value of the net energy savings can be passed on to building occupants because a certain percentage can be assumed to be dedicated to lowering the operational costs of energy consumption for common areas, which benefits all building occupants. The Treasury Department and the IRS propose to reserve allocations under this category exclusively for applicants that would equitably pass on net energy savings by distributing equal shares among the qualified residential property's units that are designated as low-income under the covered housing program, or by distributing proportional shares based on each dwelling unit's electricity usage.

This proposal accounts for the specific nature of facilities serving low-income residential buildings and facility ownership, as the facility may be third party owned or commonly owned with the building.

a. Facility and Qualified Residential Property Have Same Ownership

In scenarios where the facility and the qualified residential property have the same ownership, the Treasury Department and the IRS propose to define the financial value of net energy savings as the financial value equal to the greater of: (1) 25 percent of the gross financial value of the annual energy produced or (2) the gross financial value of the annual energy produced minus the annual costs to operate the facility. Gross financial value of the annual energy produced is calculated as the sum of (a) the total self-consumed kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's metered price of electricity and (b) the total exported kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's volumetric export compensation rate for solar and wind kilowatt-hours. The annual operating costs are calculated as the sum of annual debt service, maintenance, replacement reserve, and other costs associated with maintaining and operating the qualified solar and wind facility.

If the facility and building are commonly owned, a signed benefits sharing agreement between the building owner and the tenants would be required. The Treasury Department and the IRS request comments on how to adjust definitions of gross financial value to account for scenarios in which building occupants are compensating the facility owner for energy services.

b. Facility and Qualified Residential Property Have Different Ownership

In scenarios where the facility and the qualified residential property have different ownership and the facility owner enters into a power purchase agreement or other contract for energy services with the qualified residential property owner, the Treasury Department and the IRS propose to define net energy savings as equal to the greater of: (1) 50 percent of the financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property in the form of utility bill credit and/or cash payments for net excess generation or (2) the financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property in the form of utility bill credit and/or cash payments for net excess generation minus any payments made by the building owner to the facility owner for energy services associated with the facility in a given year. In these scenarios, the facility owner must enter into an agreement with the building owner for the building owner to distribute the savings to residents.

The Treasury Department and the IRS request comments on how to adjust definitions of gross financial value to account for scenarios in which building occupants are compensating the facility owner for energy services.

c. Impact of Metering on Delivery of Financial Benefits

Regardless of ownership, residential buildings may have master-metered or sub-metered utilities. The financial benefits of the electricity produced by the facility cannot be distributed to residents in master-metered buildings in the same manner as in sub-metered buildings and is often administratively infeasible in certain sub-metered buildings. Therefore, the Treasury Department and the IRS propose that for sub-metered buildings, the tenants must receive the financial value associated with utility bill savings in the form of a credit on their utility bills. The U.S. Department of Housing and Urban Development (HUD) has issued guidance for residents of sub-metered HUD-assisted housing that participate in community solar, providing an analysis of how community solar credits may affect utility allowance and annual income for rent calculations.[3] The Treasury Department and the IRS propose that applicants follow the HUD guidance and future HUD guidance on this issue to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted.

The Treasury Department and the IRS are aware that in some States or jurisdictions it may not be administratively, or legally, possible to apply utility bill savings on residents' electricity bills. The Treasury Department and the IRS request comments on this issue and how financial benefits, such as services and building improvements, can be provided to residents in such residential buildings.

For master-metered buildings, the Treasury Department and the IRS

[3] U.S. Department of Housing and Urban Development, Treatment of Community Solar Credits on Tenant Utility Bills (July 2020): MF Memo re Community Solar Credits July 14 Draft (*hud.gov*).

propose that because residents do not have individually metered utilities and do not receive utility bills, the building owner must pass on the savings through other means, such as by providing certain benefits to the building residents beyond those provided prior to the qualified solar and wind facility being placed in service. HUD has issued guidance for how residents of mastered-metered HUD-assisted housing can benefit from owners' sharing financial benefits accrued from an investment in solar energy generation.[4] The Treasury Department and the IRS propose that applicants follow the HUD guidance and future HUD guidance on this issue to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted.

2. Financial Benefits in Qualified Low-Income Economic Benefit Projects

For a facility to be treated as part of a qualified low-income economic benefit project, section 48(e)(2)(C) requires that at least 50 percent of the financial benefits of the electricity produced by the facility be provided to qualifying low-income households. To satisfy this standard, the Treasury Department and the IRS propose to require that the facility serves multiple households and at least 50 percent of the facility's total output is distributed to qualifying low-income households under section 48(e)(2)(C)(i) or (ii). In addition, to further the overall goals of the program, the Treasury Department and the IRS propose to reserve allocations under this category exclusively for applicants that would provide at least a 20-percent bill credit discount rate for all such low-income households. The Treasury Department and the IRS propose defining a ''bill credit discount rate'' as the difference between the financial benefit distributed to the low-income household (including utility bill credits, reductions in the low-income household's electricity rate, or other monetary benefits accrued by the household) and the cost of participating in the program (including subscription payments for renewable energy and any other fees or charges), expressed as a percentage of the financial benefit distributed to the low-income household. The bill credit discount rate can be calculated by starting with the financial benefit distributed to the low-income household, subtracting all payments made by the low-income customer to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the low-income household.

To ensure these requirements are met, verification of households' qualifying low-income status is required. Applicants are responsible for proof-of-income verification and would be required to submit documentation upon placing the qualified solar and wind facility in service that identifies each qualifying low-income household, the output allocated to each qualifying low-income household in kW, and the method of income verification utilized.

Applicants may use category eligibility or other income verification methods to qualify low-income households. Categorical eligibility consists of obtaining proof of household participation in a needs-based Federal,[5] State, Tribal, or utility program with income limits at or below the qualifying income level for the specific facility (qualifying program). State agencies (for example, state community solar/wind program administrators) can also provide verification of low-income status if the State program's income limits are at or below the qualifying income level for the qualified solar and wind facility. If a household is not enrolled in a qualifying program, additional income verification methods can be used such as: paystubs, tax returns, or income verification through crediting agencies and commercial data sources. Eligibility based on the applicant (or contractors or subcontractors) collecting self-attestations is not permissible.

D. Location

A qualified solar and wind facility is treated as ''located in a low-income community'' or ''on Indian Land'' under section 48(e)(2)(A)(iii)(I) or located in a geographic area under the Additional Selection Criteria (see part II.C) if the facility satisfies the nameplate capacity test (Nameplate Capacity Test).

Under the Nameplate Capacity Test, a facility that has nameplate capacity (for example, wind and solar facilities) is considered located in or on the relevant geographic area if 50 percent or more of the facility's nameplate capacity is in a qualifying area. A facility's nameplate capacity percentage is determined by dividing the nameplate capacity of the facility's energy-generating units that are located in the qualifying area by the total nameplate capacity of all the energy-generating units of the facility.

Nameplate capacity for an electricity generating unit means the maximum electricity generating output that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition provided in 40 CFR 96.202. Energy-generating units that generate direct current (DC) power before converting to alternating current (AC) (for example, solar photovoltaic) should use the nameplate capacity in DC, otherwise the nameplate capacity in AC should be used (for example, wind facilities). Where applicable, the International Standard Organization (ISO) conditions are used to measure the maximum electricity generating output or usable energy capacity. The nameplate capacity of any energy storage technology installed in connection with the qualified solar and wind facility does not affect the assessment of the Nameplate Capacity Test.

II. Proposed Program Requirements and Structure

A. Placed in Service Prior to Allocation Award

As stated in section 4.05 of Notice 2023–17, the Treasury Department and the IRS propose that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation. As described in Notice 2023–17, one of the broad goals of the Low-Income Communities Bonus Credit Program is to increase adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns. Facilities that were placed in service prior to the allocation process do not increase adoption of and access to renewable energy facilities as compared to the absence of the Low-Income Communities Bonus Credit Program. Further, section 48(e)(4)(E)(i) provides that a facility must be placed in service within four years of receiving an allocation of Capacity Limitation, supporting allocations to new facilities that have not yet been placed in service. Accordingly, the Treasury Department and the IRS continue to propose that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation.

[4] U.S. Department of Housing and Urban Development, Treatment of Solar Benefits in Mastered-metered Buildings (May 2023), *MF_Memo_re_Community_Solar_Credits_in_MM_Buildings.pdf* (*hud.gov*).

[5] Federal programs may include, but are not limited to: Medicaid, Low-Income Home Energy Assistance Program (LIHEAP), Weatherization Assistance Program (WAP), Supplemental Nutrition Assistance Program (SNAP), Section 8 Project-Based Rental Assistance, and the Housing Choice Voucher Program.

B. Selection Process

Under section 48(e)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of direct current capacity for the calendar year 2023 program. Section 4.02 of Notice 2023–17 specified how the annual Capacity Limitation would be allocated across the four facility categories in 2023: Located in a Low-Income Community (Category 1), Located on Indian Land (Category 2), Qualified Low-Income Residential Building Project (Category 3), and Qualified Low-Income Economic Benefit Project (Category 4). Section 4.07 of Notice 2023–17 provided that applications would be accepted in a phased approach for calendar year 2023, during 60-day application windows. Based on public feedback in response to Notice 2023–17 and an updated assessment of operational capabilities set up to administer the program, a new approach is proposed.

The Treasury Department and the IRS anticipate that the number of eligible applicants seeking an allocation may exceed the total Capacity Limitation allocation available to be allocated. The Treasury Department and the IRS are designing an application process that both ensures that allocations are awarded to facilities that advance the program goals previously stated in Notice 2023–17 and facilitates an efficient allocation process.

Accordingly, the Treasury Department and the IRS propose an approach that includes an initial application window in which applications received by a certain time and date would be evaluated together, followed with a rolling application process if Capacity Limitation is not fully allocated after the initial application window closes. Facilities that meet at least one of the two categories of specified ownership and geographic criteria (Additional Selection Criteria) would receive priority for an allocation within each facility category described in section 48(e)(2)(A)(iii). The Treasury Department and the IRS propose that at least 50 percent of the total Capacity Limitation in each facility category would be reserved for facilities meeting Additional Selection Criteria in the following fashion.

In evaluating applications received during the initial application window, priority would be given to eligible applications for facilities meeting at least one of the two Additional Selection Criteria. If the eligible applications for Capacity Limitation for facilities that meet at least one of the two Additional Selection Criteria categories exceed the Capacity Limitation for a category, facilities meeting both of the Additional Selection Criteria categories would be prioritized for an allocation. A lottery system may be used in oversubscribed categories to decide among similarly situated applications (for example, facilities that meet both of the Additional Selection Criteria categories, facilities that meet only one of the two Additional Selection Criteria categories, facilities that do not meet either of the Additional Selection Criteria categories). An applicant could not administratively appeal the Capacity Limitation allocation decisions made under the Low-Income Communities Bonus Credit Program.

If eligible applications for facilities that meet at least one of the two Additional Selection Criteria categories received during the initial application window total less than 50 percent of the Capacity Limitation for a category, additional Capacity Limitation would be reserved during the rolling application period such that 50 percent of the total Capacity Limitation in the category would be reserved for these facilities.

The Treasury Department and the IRS would retain the discretion to reallocate Capacity Limitation across categories and sub-categories in order to maximize allocation in the event one category or sub-category is oversubscribed and another has excess capacity.

C. Additional Selection Criteria

The Treasury Department and the IRS propose that the two Additional Selection Criteria are Ownership Criteria and Geographic Criteria.

1. Ownership Criteria

The Ownership Criteria category is based on characteristics of the applicant that owns the qualified solar and wind facility. A qualified solar and wind facility would meet the Ownership Criteria if it is owned by a Tribal Enterprise, an Alaska Native Corporation, a renewable energy cooperative, a qualified renewable energy company meeting certain characteristics, or a qualified tax-exempt entity. If an applicant wholly owns an entity that is the owner of a qualified solar and wind facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), the applicant, and not the disregarded entity, is treated as the owner of the qualified solar and wind facility for purposes of the Ownership Criteria.

a. Tribal Enterprise

A ''Tribal Enterprise'' for purposes of the Ownership Criteria is an entity that is (1) an Indian Tribal government (as defined in section 30D(g)(9) of the Code) that owns at least a 51 percent interest in, either directly or indirectly (through a wholly owned corporation created under its Tribal laws or through a section 3 or section 17 Corporation),[6] and (2) the Indian Tribal government has the power to appoint and remove a majority (more than 50 percent) of the individuals serving on the entity's board of directors or equivalent governing board.

b. Alaska Native Corporation

An ''Alaska Native corporation'' for purposes of the Ownership Criteria is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

c. Renewable Energy Cooperative

A ''renewable energy cooperative'' for purposes of the Ownership Criteria is an entity that develops qualified solar and/or wind facilities and owns at least 51 percent of a facility and is either (1) a consumer or purchasing cooperative controlled by its members who are low-income households (as defined in section 48(e)(2)(C)) with each member having an equal voting right, or (2) a worker cooperative controlled by its worker-members with each member having an equal voting right.

d. Qualified Renewable Energy Company

A ''qualified renewable energy company'' for purposes of the Ownership Criteria would be an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households. In addition to its general business purpose, the Treasury Department and the IRS are considering the following requirements that a qualified renewable energy company would need to satisfy:

(1) At least 51 percent of the entity's equity interests are owned and controlled by (a) one or more individuals, (b) a Community Development Corporation (as defined in 13 CFR 124.3), (c) an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A) of the Code), (d) an Indian Tribal government (as defined in section 30D(g)(9)), (e) an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims

[6] A ''section 17 corporation'' is a corporation incorporated under the authority of section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124. A ''section 3 corporation'' is a corporation that is incorporated under the authority of section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203.

Settlement Act, 43 U.S.C. 1602(m)), or (f) a Native Hawaiian organization (as defined in 13 CFR 124.3);

(2) After applying the controlled group rules under section 52(a) of the Code, has less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4) of the Code) and less than $5 million in annual gross receipts in the previous calendar year;

(3) First installed or operated a qualified solar and wind facility as defined in section 48(e)(2)(A) two or more years prior to the date of application; and

(4) Has installed and/or operated qualified solar and wind facilities as defined in section 48(e)(2)(A) with at least 100 kW of cumulative nameplate capacity located in one or more Low-Income Communities as defined in section 48(e)(2)(A)(iii)(I).

The Treasury Department and the IRS specifically request comments on these proposed elements for determining whether a business is a qualified renewable energy company. The Treasury Department and the IRS also request comments on an administrable rule to ensure that qualified renewable energy companies are employing workers in the Low-Income Communities.

e. Qualified Tax-Exempt Entity

A ''qualified tax-exempt entity'' for purposes of the Ownership Criteria is:

(1) An organization exempt from the tax imposed by subtitle A of the Code by reason of being described in section 501(c)(3) or section 501(d);

(2) Any State, the District of Columbia, or political subdivision thereof, any territory of the United States, or any agency or instrumentality of any of the foregoing;

(3) An Indian Tribal government (as defined in section 30D(g)(9)), political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(4) Any corporation described in section 501(c)(12) operating on a cooperative basis which is engaged in furnishing electric energy to persons in rural areas.

2. Geographic Criteria

The Geographic Criteria category is based on where the facility will be placed in service. To meet the Geographic Criteria, a facility would need to be located in a Persistent Poverty County (PPC)[7] or in a census tract that is designated in the Climate and Economic Justice Screening Tool (CEJST) as disadvantaged based on whether the tract is either (a) greater than or equal to the 90th percentile for energy burden and is greater than or equal to the 65th percentile for low income, or (b) greater than or equal to the 90th percentile for $PM_{2.5}$ exposure and is greater than or equal to the 65th percentile for low income.[8] The Treasury Department and the IRS propose that applicants who meet the Geographic Criteria at the time of application are considered to continue to meet the Geographic Criteria for the duration of the recapture period, unless the location of the facility changes.

A PPC is generally defined as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For the purposes of the Low-Income Communities Bonus Credit Program, the Treasury Department and the IRS propose the PPC measure adopted by the U.S. Department of Agriculture to make this determination. The most recent measure, which would apply for the 2023 program year, incorporates poverty estimates from the 1980, 1990, 2000 censuses, and 2007–11 American Community Survey 5-year average.

D. Sub-Reservations of Allocation for Facilities Located in a Low-Income Community

Notice 2023–17 provided that 700 megawatts of 2023 calendar year Capacity Limitation would be reserved for Category 1. The Treasury Department and the IRS anticipate that Category 1 will receive the largest number of applications, and that most applications will be for small rooftop residential solar facilities. Therefore, the Treasury Department and the IRS propose to subdivide the 700 MW Capacity Limitation reservation for facilities seeking a Category 1 allocation with 560 megawatts reserved specifically for eligible residential behind the meter (BTM) facilities, including rooftop solar. The sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations are predominantly awarded to facilities serving residences and consumers, rather than facilities serving businesses. The remaining 140 megawatts of Capacity Limitation would be available for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities.

The Treasury Department and the IRS propose to define an eligible residential BTM facility as single-family or multi-family residential qualified solar and wind facility that does not meet the requirements for Category 3 and is BTM. A qualified wind and solar facility is BTM if: (1) it is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located, (2) it is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid), and (3) its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located.

The Treasury Department and the IRS propose to define a FTM facility. A facility is FTM if it is directly connected to a grid and its sole purpose is to provide electricity to one or more offsite locations via such grid; alternatively, FTM is defined as a facility that is not BTM.

E. Application Materials

Section 48(e)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process. Additionally, section 48(e)(4)(E)(i) requires that facilities allocated an amount of Capacity Limitation be placed in service within four years of the date of allocation. To promote efficient allocation, and to better ensure that allocations will be awarded to facilities that are sufficiently viable and well defined to allow for a review for an allocation, and sufficiently advanced such that they are likely to meet the four-year placed-in-service deadline, the Treasury Department and the IRS propose to require applicants to submit certain documentation and attestations when applying for an allocation. Some requirements differ for FTM and BTM facilities and other requirements differ by Category and Additional Selection Criteria.

[7] *https://www.ers.usda.gov/data-products/county-typology-codes/.*

[8] *https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5.* The CEJST website provides further detail on the terms used in identifying census tracts for the Energy category. ''Energy cost'' is defined as ''Average household annual energy cost in dollars divided by the average household income.'' $PM_{2.5}$ is defined as ''Fine inhalable particles with 2.5 or smaller micrometer diameters. The percentile is the weight of the particles per cubic meter.'' ''Low income'' is defined as ''Percent of a census tract's population in households where household income is at or below 200% of the Federal poverty level, not including students enrolled in higher education.'' See Methodology & data—Climate & Economic Justice Screening Tool (*geoplatform.gov.*)

Under this proposed approach, applicants would be required to submit the following:

1. Documentation and Attestations To Be Submitted for All Facilities

	FTM	BTM ≤1 MW AC	BTM >1 MW AC
Proposed Document Requirement			
An executed contract to purchase the facility, an executed contract to lease the facility, or an executed power purchase agreement for the facility.	No	Yes	Yes.
A copy of the final executed interconnection agreement, if applicable [9]	Yes	No	Yes.
Proposed Attestation Requirement			
The applicant has site control through ownership, an executed lease contract, site access agreement or similar agreement between the property owner and the applicant.	Yes	No	No.
The facility has obtained all applicable Federal, State, Tribal, and local non-ministerial permits, or that the facility is not required to obtain such permits.	Yes	Yes	Yes.
The applicant is in compliance with all Federal, State, and Tribal laws, including consumer protection laws (as applicable).	Yes	Yes	Yes.
The applicant has appropriately sized the facility (to meet no more than 110% of historical customer load).	No	Yes	Yes.
The applicant has appropriately sized the customer's facility output share and has based facility output share on historical customer load.	Yes	No	No.
The applicant has inspected installation sites for suitability (for example, roofs)	Yes	Yes	Yes.

2. Documentation and Attestations To Be Submitted for Certain Facilities Depending on Category and Additional Selection Criteria

	Category 1	Category 2	Category 3	Category 4
Proposed Document Requirement				
Documentation demonstrating property will be installed on an eligible residential building.	No	No	Yes	No.
Plans to ensure tenants receive required financial benefits	No	No	Yes	No.
If applying under Additional Selection Criteria: Documentation demonstrating applicant meets Ownership Criteria.	Yes	Yes	Yes	Yes.
Proposed Attestation Requirement				
Facility location is eligible [10]	Yes	Yes	No	No.
Consumer disclosures informing customers of their legal rights and protections have been provided to customers that have signed up and will be provided to future customers.	Yes	Yes	Yes (provided to tenants).	Yes.
The applicant will ensure at least 50% of the financial benefits will be provided to qualified households at 20% bill credit discount rate.	No	No	No	Yes.
If applying under additional Selection Criteria: Facility location is eligible based on PPC/CEJST.	Yes	No	Yes	Yes.

F. Documentation and Attestations To Be Submitted When Placed in Service

The Treasury Department and the IRS also propose to require facilities that received a Capacity Limitation allocation to report to the Department of Energy (DOE) that the facility has been placed in service, and to submit additional documentation or complete additional attestations with this reporting. At the time of application, applicants would not necessarily be able to demonstrate compliance with certain eligibility requirements, as the facility would not yet be operating at that time. Requiring placed in service reporting would allow for final verification that the facilities that were awarded a Capacity Limitation Allocation have met certain eligibility requirements under the Low-Income Communities Bonus Credit Program.

The applicant-owner would submit documentation or sign an attestation for the following:

[9] If an interconnection agreement is not applicable to the facility (for example, due to utility ownership), this requirement is satisfied by a final written decision from a Public Utility Commission, cooperative board, or other governing body with sufficient authority that financially authorizes the facility. If the facility is located in a market where the interconnection agreement cannot be signed prior to construction of the facility or interconnection facilities, this requirement is satisfied by a signed conditional approval letter from the jurisdictional utility and an affidavit from a senior corporate officer of the applicant (or someone with authority to bind the applicant) stating that an interconnection agreement cannot be executed until after construction of the facility.

[10] Facility location would be reviewed using latitude and longitude coordinates when possible.

	Category
Proposed Attestation Requirement	
Confirmation of material ownership and/or facility changes from application or that there has been no change from the application.	All.
Proposed Document Requirement	
Permission to Operate (PTO) letter (or commissioning report verifying for off-grid facilities) that the facility has been placed in service and the location of the facility being placed in service.	All.
Final, Professional Engineer (PE) stamped as-built design plan, PTO letter with nameplate capacity listed, or other documentation from an unrelated party verifying as-built nameplate capacity.	All.
Benefits Sharing Agreement for qualified residential building projects between building owner and tenants (including for facilities that are third party owned, additional sharing agreement between the facility owner and the building owner).	3.
Final list of households or other entities served with name, address, subscription share, and income status of qualifying low-income households served, and the income verification method used.	4.
Spreadsheet demonstrating the expected financial benefit to low-income subscribers to demonstrate the 20% bill credit discount rate.	4.

G. Post-Allocation Compliance

1. Disqualification After Receiving an Allocation

The Treasury Department and the IRS recognize that because, under section 48(e)(4)(E)(i), an applicant has four years after the date of an allocation of Capacity Limitation to place eligible property in service, circumstances may change prior to the property being placed in service such that a facility is no longer eligible for the allocation it received. In addition, to promote an efficient allocation process consistent with section 48(e)(4)(A), the Treasury Department and the IRS want to discourage material changes in project plans, such as significant reductions in facility size that tie up Capacity Limitation that could otherwise be awarded to other qualified facilities.

Accordingly, the Treasury Department and the IRS propose that a facility that was awarded a Capacity Limitation allocation is disqualified from receiving that allocation if prior to or upon the facility being placed in service: (1) the location where the facility will be placed in service changes; (2) the nameplate capacity of the facility increases such that it exceeds the less than 5-megawatt alternating current output limitation provided in section 48(e)(2)(A)(ii) or decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation; (3) the facility cannot satisfy the financial benefits requirements under section 48(e)(2)(B)(ii) as planned (if applicable) or cannot satisfy the financial benefits requirements under section 48(e)(2)(C) as planned (if applicable); (4) the eligible property which is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility; or (5) the facility received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria and ownership of the facility changes prior to the facility being placed in service such that the Ownership criteria is no longer satisfied, unless a) the original applicant retains an ownership interest in the entity that owns the facility and b) the successor owner attests that after the five year recapture period, the original applicant that met the Ownership Criteria will become the owner of the facility or that this original applicant will have the right of first refusal.

2. Recapture of Section 48(e) Increase

Section 48(e)(5) requires the Secretary, by regulations or other guidance, to provide rules for recapturing the benefit of any section 48(e) Increase with respect to any property which ceases to be property eligible for such section 48(e) Increase (but which does not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture is determined under rules similar to the rules of section 50(a). To the extent provided by the Secretary, such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such section 48(e) Increase, the eligibility of such property for such section 48(e) Increase is restored. Such restoration of a section 48(e) Increase is not available more than once with respect to any facility.

The Treasury Department and the IRS propose that the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48(e): (1) property described in section 48(e)(2)(A)(iii)(II) fails to provide financial benefits over the 5-year period after its original placed-in-service date; (2) property described under section 48(e)(2)(B) ceases to allocate the financial benefits equitably among the occupants of the dwelling units, such as not passing on to residents the required net energy savings of the electricity; (3) property described under section 48(e)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to qualifying households as described under section 48(e)(2)(C)(i) or (ii), or fails to provide those households the required minimum 20 percent bill credit discount rate; (4) for property described under section 48(e)(2)(B), the residential rental building the facility is a part of ceases to participate in a covered housing program or any other housing program described in section 48(e)(2)(B)(i), if applicable; and (5) a facility increases its output such that the facility's output is 5 MW AC or greater, unless the applicant can prove that the output increase is not attributable to the original facility but rather is output associated with a new facility under the 80/20 Rule (the cost of the new property plus the value of the used property). See Rev. Rul. 94–31, 1994–1 C.B. 16.

Proposed Applicability Date

These proposed rules are proposed to apply to taxable years ending on or after the date that final rules adopting these proposed rules are published in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

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

These proposed rules have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax rules. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed rules have been reviewed by OMB.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information in these proposed regulations contain reporting and recordkeeping requirements that are required to obtain the section 48(e) Increase. This information in the collections of information would generally be used by the IRS and DOE for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. A Federal 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 control number.

The recordkeeping requirements mentioned within this proposed regulation are considered general tax records under Section 1.6001–1(e). These records are required for IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive section 48(e) Increase. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers, 1545–0074 for individual filers, and 1545–0047 for tax-exempt organizations.

The proposed regulation also mentions reporting requirements related to providing attestations and supporting documentation for initial application, supplemental documentation for specific facilities, and to confirm a facility is placed in service as detailed in this NPRM. These attestations and documentation would allow IRS to allocate Capacity Limitation and ensure taxpayers keep and maintain compliance for the credits. To assist with the collections of information, the DOE will provide certain administration services for the Low-Income Communities Bonus Credit Program. Among other things, the DOE will establish a website portal to review the applications for eligibility criteria and will provide recommendations to the IRS regarding the selection of applications for an allocation of Capacity Limitation. These collection requirements will be submitted to the Office of Management and Budget (OMB) under 1545–NEW for review and approval in accordance with 5 CFR 1320.11. The likely respondents are business filers, individual filers, and tax-exempt organization filers. A summary of paperwork burden estimates for the application and attestations is as follows:

Estimated number of respondents: 70,000.

Estimated burden per response: 60 minutes.

Estimated frequency of response: 1 for initial applications, 1 for follow-up documentation, and 1 for projects placed in service.

Estimated total burden hours: 210,000 burden hours.

IRS will be soliciting feedback on the collection requirements for the application and attestations. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain,* with copies to the Internal Revenue Service. Find this particular information collection by selecting ''*Currently under Review—Open for Public Comments*'' then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–110412–23 on the Subject line). Comments on the collection of information should be received June 30, 2023. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility. The accuracy of the estimated burden associated with the proposed collection of information. How the quality, utility, and clarity of the information to be collected may be enhanced. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule would likely have a significant economic impact on a substantial number of small entities. This determination requires further study and an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

1. Need for and Objectives of the Rule

The proposed regulations would provide guidance for purposes of participation in the program to allocate the environmental justice solar and wind capacity limitation under § 48(e) for the Low-Income Communities Bonus Credit Program. The proposed rule is expected to encourage applicants to invest in solar and wind energy. Thus, the Treasury Department and the IRS intend and expect that the proposed rule will deliver benefits across the economy and environment that will beneficially impact various industries.

2. Affected Small Entities

The Small Business Administration estimates in its 2018 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these

proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, these rules may affect a variety of different businesses across serval different industries.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when participation in the Low-Income Communities Bonus Credit Program commences.

3. Impact of the Rules

The recordkeeping and reporting requirements would increase for applicants that participate in the Low-Income Communities Bonus Credit Program. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

4. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, the Treasury Department and the IRS considered exclusively using a lottery system for all over-subscribed categories, rather than creating reservations for facilities meeting additional selection criteria. Although a lottery system may ultimately need to be used for an oversubscribed category, the Treasury Department and the IRS decided that it was important to propose reserving Capacity Limitation for facilities that meet certain additional selection criteria that further the policy goals of the Low-Income Communities Bonus Credit Program.

Additionally, when considering how to define ''in connection with,'' the Treasury Department and the IRS were mindful that the statute requires the energy storage technology to be installed in connection with a qualifying solar or wind facility to be eligible for an increase in the energy percentage used to calculate the amount of the section 48 credit. Different alternatives were considered on how to address this definition. For example, the Treasury Department and the IRS considered but ultimately decided not to incorporate the proposed safe harbor (deeming the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind or solar) as part of the general rule to define ''in connection with.'' The proposed general rule instead requires the energy storage technology to have a sufficient nexus to the other eligible property because it is part of the single project and is significantly charged by the eligible property.

Another example where different alternatives were considered was with respect to application materials. Section 48(e)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process, and section 48(e)(4)(E)(i) allows an applicant up to four years after receiving a Capacity Limitation allocation to place eligible property into service. Alternatives were considered on how best to balance these statutory requirements, considering practical issues for taxpayers and residents as well as the traditional structure and arrangement of these solar and wind transactions, including considerations on the type of facility (BTM or FTM) and the capacity of the facility. Among other things, the Treasury Department and the IRS considered whether an application for an interconnection agreement or an executed interconnection agreement should be required as part of the application materials. The proposed regulations are based on the view that the executed interconnection agreement, if applicable, is an essential documentation to demonstrate sufficient project maturity.

Additionally, the Treasury Department and the IRS considered a variety of bill credit discounts for Category 4 qualified low-income benefit project facilities. The bill credit discounts considered included 10 percent, 15 percent, or 20 percent. Alternatively, the Treasury Department and the IRS considered the option of a range of discounts from 10 percent to 20 percent from which applicants could choose which discount rate to provide low-income customers. However, to ensure that low-income customers are receiving meaningful financial benefits, the Treasury Department and the IRS decided to propose a 20 percent discount.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed rule would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Explanation of Provisions, the proposed rules would merely provide requirements, procedures, and definitions related to the Low-Income Communities Bonus Credit Program. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments

Before these proposed rules are adopted as final rules, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Any electronic or paper comments submitted will be made available at *https://www.regulations.gov* or upon request.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed rules is the Office of the Associate Chief Counsel (Passthroughs

and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–11718 Filed 5–31–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0461]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD, during activities associated with an air show event from July 14, 2023, through July 16, 2023. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 3, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0461 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Samuel M. Danus, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2519, email *MDNCRMarineEvents@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
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows LLC of Clearfield, PA, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River Airshow from 7 to 8 p.m. on July 14, 2023, from 2 to 3 p.m. on July 15, 2023, and from 2 to 3 p.m. on July 16, 2023. High speed, low-flying civilian and military aircraft air show performers will operate within a designated, marked aerobatics box located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being held adjacent to Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and near or actual contact among participants and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating near a designated navigation channel, as well as operating adjacent to waterside residential communities. The COTP Maryland-National Capital Region has determined that potential hazards associated with the air show would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of Back River.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 6 p.m. on July 14, 2023, through 4 p.m. on July 16, 2023. The regulations would be enforced from 6 to 9 p.m. on July 14, 2023, from 1 to 4 p.m. on July 15, 2023, and from 1 to 4 p.m. on July 16, 2023. The regulated area would cover all navigable waters of Back River within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include ''Aerobatics Box'' and ''Spectator Areas.''

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, scheduled from 7 to 8 p.m. on July 14, 2023, from 2 to 3 p.m. on July 15, 2023, and from 2 to 3 p.m. on July 16, 2023. The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2023 Tiki Lee's Shootout on the River Airshow participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Operators of vessels already at berth desiring to move those vessels when the event is subject to enforcement would be required to obtain permission before doing so. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing

this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels would be allowed to enter the aerobatics box. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small, designated area of Back River for 9 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic would be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 9 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0461 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501 T05–0461 to read as follows:

§ 100.501 T05–0461 2023 Tiki Lee's Shootout on the River Airshow, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Aerobatics Box.* The aerobatics box is a polygon in shape measuring approximately 5,000 feet in length by 1,000 feet in width. The area is bounded by a line commencing at position latitude 39°16′01.2″ N, longitude 076°27′05.7″ W, thence east to latitude 39°16′04.7″ N, longitude 076°26′53.7″ W, thence south to latitude 39°15′16.9″ N, longitude 076°26′35.2″ W, thence west to latitude 39°15′13.7″ N, longitude 076°26′47.2″ W, thence north to and terminating at the point of origin.

(3) *Spectator Areas*—(i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

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

Aerobatics Box is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by this section.

Captain of the Port (COTP), Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2023 Tiki Lee's

Shootout on the River Airshow'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.*

(1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 6 to 9 p.m. on July 14, 2023, from 1 to 4 p.m. on July 15, 2023, and from 1 to 4 p.m. on July 16, 2023.

Dated: May 25, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2023–11620 Filed 5–31–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0383]

RIN 1625–AA00

Safety Zone; Whites Bay, Henderson Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of Whites Bay. This action is necessary to provide for the safety of life on these navigable waters near Henderson Harbor, NY, during a fireworks display on July 1, 2023. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 3, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0383 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1, Julio Maldonado, MSD Massena, U.S. Coast Guard; telephone 315–769–5483, email *SMB-MSDMassena-WaterwaysManagement@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, Purpose, and Legal Basis

On February 17, 2023, Sean James notified the Coast Guard that it will be conducting a private fireworks display from 9:30 p.m. to 10 p.m. on July 1, 2023. The fireworks are to be launched from a barge in the center of Whites Bay approximately 167 yards from shore in Henderson Harbor, NY. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Buffalo (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 140-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 140-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 to 10:30 p.m. on July 1, 2023. The safety zone would cover all navigable waters within 140 yards of a barge in Whites Bay located approximately 167 yards from shore in Henderson Harbor, NY. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 10 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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 Whites Bay 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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 1.5 hours that would prohibit entry within 140 yards of a fireworks barge. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0383 in the search box and click ''Search.'' Next, look for this document in the Search Results column,

and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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.T09–0383 to read as follows:

§ 165.T09–0383 Safety Zone; Safety Zone; Whites Bay, Henderson Harbor, NY.

(a) *Location.* The following area is a safety zone: All waters of Henderson Harbor, from surface to bottom, encompassing a 140 yard radius from a barge in position 43°52′13.4″ N, 076°13′27.1″ W. These coordinates are based on WGS 84.

(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 Buffalo (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 716–843–9322. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone will be enforced from 9 p.m. to 10:30 p.m. on July 1, 2023.

Dated: May 25, 2023.

Mark I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2023–11624 Filed 5–31–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 78, and 97

[EPA–R06–OAR–2016–0611; EPA–HQ–OAR–2016–0598; FRL–9771–03–R6]

Revision and Promulgation of Air Quality Implementation Plans; Texas; Regional Haze Federal Implementation Plan; Disapproval and Need for Error Correction; Denial of Reconsideration of Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 4, 2023, the Environmental Protection Agency (EPA) proposed a rule titled, ''Revision and Promulgation of Air Quality Implementation Plans; Texas; Regional Haze Federal Implementation Plan; Disapproval and Need for Error Correction; Denial of Reconsideration of Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations.'' The EPA is extending the comment period on the proposed rule that was scheduled to close on July 3, 2023. The EPA has received requests for additional time to review and comment on the proposed rule revisions.

DATES: The public comment period for the proposed ruled published in the **Federal Register** on May 4, 2023 (88 FR 28918), is being extended. Written comments must be received on or before August 2, 2023.

ADDRESSES: The EPA has established docket number EPA–HQ–OAR–2016–0611 for this action. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov/.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For additional information on this action, contact Michael Feldman, Air and Radiation Division, SO_2 and Regional Haze Section (ARSH), Environmental Protection Agency, 1201 Elm St., Suite 500 Dallas, TX 75270; telephone number: (214) 665–9793; or via email: *R6TXBARTandCSAPRPetition@epa.gov.*

SUPPLEMENTARY INFORMATION: After considering the requests to extend the public comment period received from various parties, the EPA has decided to extend the public comment period until August 2, 2023. This extension will ensure that the public has additional time to review the proposed rule.

Scott Mathias,

Director, Air Quality Policy Division, Office of Air Quality Planning and Standards.

[FR Doc. 2023–11585 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0178; FRL–7055–04–OAR]

RIN 2060–AU37

National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On April 13, 2023, the U.S. Environmental Protection Agency (EPA) proposed a rule titled ''National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review.'' The EPA is extending the comment period on this proposed rule that currently closes on June 12, 2023, by 15 days. The comment period will now remain open until June 27, 2023, to allow additional time for stakeholders to review and comment on the proposal.

DATES: The public comment period for the proposed rule published in the **Federal Register** (FR) on April 13, 2023 (88 FR 22790), originally ending June 12, 2023, is being extended by 15 days. Written comments must now be received on or before June 27, 2023.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–HQ–OAR–2019–0178, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*. Include Docket ID No. EPA–HQ–OAR–2019–0178 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2019–0178.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2019–0178, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions. All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Jonathan Witt, Sector Policies and Programs Division (E143–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5645; and email address: *witt.jon@epa.gov*.

SUPPLEMENTARY INFORMATION:

Rationale. On April 13, 2023, the U.S. Environmental Protection Agency (EPA) proposed a rule titled ''National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review.'' 88 FR 22790. The comment period on this proposed rule currently closes on June 12, 2023. The EPA has received numerous requests for additional time to review and comment on this proposed rule. The EPA has decided to extend the period by 15 days. The public comment period will now end on June 27, 2023.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2019–0178. All documents in the docket are listed in *https://www.regulations.gov/*. Although listed, 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. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0178. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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*.

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets*.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/*. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the

information claimed as CBI directly to the public docket through the procedures outlined in instructions above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2019–0178. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Penny Lassiter,

Director, Sector Policies and Programs Division.

[FR Doc. 2023–11619 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 19, 21, and 22

[Docket No. FWS–HQ–MB–2022–0023; FF09M30000–223–FXMB12320900000]

RIN 1018–BC76

Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend our regulations to revise current regulatory authorizations and add new regulatory authorizations for possession of migratory birds and eagles and other purposes. These proposed changes would more efficiently and appropriately authorize the general public, educators, and government agency employees to possess birds and eagles in certain specific situations while meeting our obligations under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. We also propose a change to the Airborne Hunting Act regulations to clarify what Federal authorizations may be used to comply with that statute.

DATES: This proposed rule is available for public comment through July 31, 2023.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service (see ''Information Collection'' section below under **ADDRESSES**) by July 31, 2023.

ADDRESSES: *Comment submission:* You may submit written comments on this proposed rule and draft environmental review by one of the following methods:

- *Electronically at the Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2022–0023.
- *By hard copy via U.S. mail:* Public Comments Processing, Attn: FWS–HQ–MB–2022–0023; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov,* including any personal information you provide. See *Public Availability of Comments* below.

Information Collection Requirements: Send your comments on the information collection request to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *Info_Coll@fws.gov;* or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018–BC76 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director–Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: 703–358–2606, email: *MB_mail@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated with the primary responsibility for managing migratory birds, including bald eagles and golden eagles. Our authority derives primarily from the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703–12 (MBTA), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russian Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are set forth at 50 CFR part 21. In addition, the Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d (hereafter referred to as the Eagle Protection Act), prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Protection Act authorizes the Secretary of the Interior to issue regulations to permit the ''taking'' of eagles for various purposes, including the protection of ''other interests in any particular locality'' (16 U.S.C. 668a), provided the taking is compatible with the preservation of eagles. Regulations pertaining to eagle permits are set forth at 50 CFR part 22.

The Service has long authorized activities under regulatory authorizations. The origins of the regulatory authorization ''general exceptions to permit requirements'' (50 CFR 21.12) can be traced back as far as 1944. This proposed rulemaking action would improve organization and transparency by redesignating the existing regulatory authorizations codified at 50 CFR 21.12(a)–(d) to their own sections. The Service also proposes new regulatory authorizations. Finally,

we propose to modify the limitations on permits under the Airborne Hunting Act regulations (50 CFR part 19) to support emerging uses of technology for bird conservation.

Proposed Rule

We propose to revise existing regulatory authorizations and add new regulatory authorizations by amending various provisions in the regulations governing migratory bird permits (50 CFR part 21) and the regulations governing eagle permits (50 CFR part 22). Additional proposed amendments to 50 CFR parts 21 and 22 would update references to 50 CFR 21.12. We also propose to add a definition for ''humane and healthful conditions'' to 50 CFR 21.6 and 22.6, remove the current regulatory authorization for the possession of live migratory birds, and make clarifying changes to Federal authorizations under Airborne Hunting Act regulations (50 CFR 19.21). We describe each of the proposed regulations in more detail below in this preamble.

Regulatory authorizations are regulations that establish eligibility criteria and conditions for the take or possession of migratory birds by an entity without requiring a permit to conduct those activities. Regulatory authorizations can include conditions and recordkeeping, reporting, and inspection requirements but otherwise have a relatively low administrative burden and require little to no interaction with the Service. Regulatory authorizations are most appropriate for situations that have straightforward eligibility criteria, do not require case-by-case customization of conditions, and pose a low risk to migratory bird populations. Entities that are eligible for a regulatory authorization must comply with the required conditions, including records and reporting requirements, and are subject to enforcement for noncompliance.

The Service proposes modifications to five existing regulatory authorizations (currently in 50 CFR 21.12(a)–(d) and indicated with ''proposed for revision'' in the preamble headings below). These modifications clarify language in these existing authorizations that is unclear or has created unintended restrictions or allowances. In this rulemaking, the Service also proposes new regulatory authorizations. These regulatory authorizations are for activities currently authorized under existing permit types for the following purposes: salvage, activities by agency natural resource employees, and exhibition of eagle specimens. The proposed regulations are not authorizing a new activity: Instead, they are proposing to change the authorization mechanism from a permit to a regulatory authorization. After decades of issuance, these permit types have straightforward eligibility criteria, and the permit conditions do not require case-by-case customization, making them appropriate for a regulatory authorization.

General Public—Birds in Buildings Authorization (Proposed for Revision)

Current regulations include a regulatory authorization that authorizes any person to remove a migratory bird from the interior of a building or structure (50 CFR 21.12(d)). We propose to redesignate this regulation to 50 CFR 21.14 and make clarifying revisions. We propose to expand the authorization from the current text of ''residence or a commercial or government building'' to ''residence, business, or similar human-occupied building or structure.'' We propose to amend current text that inadvertently excluded structures similar to buildings, such as belltowers. It is beneficial to birds and humans for us to allow removal of birds unintentionally trapped in the interior of any building or structure. As proposed, this authorization would not apply to birds or nests on the exterior of a building or structure. Removal of active nests on the exterior of buildings would continue to require a permit, such as in exterior eaves or bridges. We also propose additional text that would require any removal of birds to be undertaken under humane and healthful conditions and also include sources for technical assistance.

General Public—Salvage Authorization

Current regulations require a permit for any person to salvage (*i.e.,* pick up) migratory birds found dead, including parts, feathers, nonviable eggs, and inactive nests. Salvage permits are currently issued under the special purpose permits regulations (50 CFR 21.95). We propose a new authorization at 50 CFR 21.16 for any person to salvage migratory birds found dead. Federal, State, or local guidance for safe handling and disposal of dead wildlife should be followed. All birds salvaged must be promptly disposed of by donation to a person or entity authorized to receive them, such as for purposes of education or science, or disposed of by complete destruction. Any person may contact the Service Migratory Bird Program to determine if an entity is authorized to receive donated birds. Birds may not be retained for personal use, sold, bartered, or traded.

We propose this authorization for two reasons. First, to address one-time salvage situations such as: a person who finds a migratory bird in good condition and seeks to put the remains to good use by donation to a nature center; or a person who picks up a dead bird to put it in the trash. It does not make sense to prohibit these everyday activities or to require a permit to conduct them. Second, this proposed regulatory authorization would also relieve the administrative burden of the permitting process for both the Service and for those who salvage birds with some regularity. Salvage permits have minimal issuance criteria and no customized permit conditions. To reduce the administrative burden for the public and the Service, we propose to replace the current permit requirement for salvage with a regulatory authorization.

The Service recognizes that bald eagles and golden eagles hold cultural significance for many Native American Tribes. In honor of our trust relationship with Native American Tribes, the proposed regulation limits the disposition of (*i.e.,* what can be done with) salvaged bald eagles and golden eagles. Current salvage permit conditions require that salvaged eagles, parts, and feathers be disposed of by donation to the Service's National Eagle Repository in Commerce City, CO, and that the Repository be contacted for donation instructions. Currently, persons without salvage permits who find an eagle must notify a local, State, or Federal wildlife agency that has authorization to salvage the eagle, parts, or feathers. The agency then sends the items to the National Eagle Repository. However, most wildlife agencies have limited capacity to engage in these activities, which results in many found eagles, parts, and feathers failing to reach the National Eagle Repository. The proposed regulation would help relieve this problem and increase the availability of eagles to members of federally recognized Tribes through the National Eagle Repository.

We propose to continue to require that any salvaged bald eagles or golden eagles be donated to the National Eagle Repository and to allow the National Eagle Repository to determine if eagles, parts, or feathers are unsuitable for distribution. However, the proposed rule provides that, if determined unsuitable by the National Eagle Repository, those items could be donated for scientific or exhibition purposes or completely destroyed. The proposed rule does not change the authorization for Native American

Tribes to retain eagles with a Tribal eagle remains permit (50 CFR 22.60).

Public Institutions—Educational Use of Specimens Authorization (Proposed for Revision)

Current regulations authorize certain public entities to possess migratory bird specimens (50 CFR 21.12(b)(1)). We propose to redesignate this regulation to 50 CFR 21.18 and make the following revisions: We propose to restrict this authorization to possession of specimens only (*i.e.,* exclude live birds) and to expand this authorization to all public entities (as defined in 50 CFR 10.12). We propose additional revisions to incorporate current universal permit conditions required in possession permits for educational use under the special purpose regulations at 50 CFR 21.95.

We propose to adopt the following interpretation of the term ''public'' as part of this rulemaking. ''Public'' in relation to a museum, zoological park, or scientific or educational institution is currently defined in our general permit regulations at 50 CFR 10.12 as referring to museums, zoological parks, and scientific or educational institutions that are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit. We would interpret the following terms used in this definition of ''public'' as follows:

- ''Open to the general public'' means an entity that is open on a regularly scheduled basis during publicly posted hours of at least 400 hours per calendar year or conducts at least 12 public educational programs per year. The entity may charge a fee for entry or to attend programs. A program would not qualify as a public program if access is restricted to a limited group of individuals.
- ''Governmental service'' means services provided by government agencies, including Federal, State, Tribal, or local agencies, as well as services provided by entities operating on behalf of a government agency, such as contractors. Those operating on behalf of an agency must have documentation (*e.g.,* a letter from the agency) authorizing operation.
- ''Nonprofit organization'' means an entity that is privately endowed (*i.e.,* funded) and Internal Revenue Service tax-exempt under 26 U.S.C. 501(c)(3).
- The term ''endowed'' is synonymous with ''funded'' and does not require a minimum endowment to qualify as public. The Service recommends that an entity's financial health and stability should be sufficient to cover the operational costs associated with the activities conducted as well as costs that will cover migratory bird or eagle placement in the event the entity must close. In future rulemaking, the Service may consider a minimum endowment requirement for certain permit types, such as those involving the possession of live birds. Individuals and for-profit entities do not qualify as ''public.''

This proposed regulation would not authorize the possession of live migratory birds without a permit. The current regulations at 50 CFR 21.12(b)(1) authorize possession of live birds without a permit in certain situations for qualifying entities. We are proposing to eliminate general authorization to possess live birds and instead require a permit for those activities. Elsewhere in this issue of the **Federal Register**, the Service has also published an advance notice of proposed rulemaking regarding the exhibition of live migratory birds and eagles for educational purposes (RIN 1018–BF58). Any entity currently operating under 50 CFR 21.12(b)(1) may continue activities currently authorized by the regulatory authorization until the Service finalizes the proposed educational use regulations. Certain aspects of this proposed rulemaking must be finalized before promulgating the educational use rulemaking. For that reason, it is not feasible to leave the current regulatory authorization for live bird possession in place until the educational use regulations are finalized. Therefore, the Service proposes to remove the existing regulatory authorization for live possession of migratory birds but allow currently excepted entities to continue operating as authorized until the educational use regulations are finalized, at which time those entities would have to comply with the new regulations.

Public Institutions—Authorization for Exhibition Use of Eagle Specimens

Currently, an eagle exhibition permit (50 CFR 22.50) is required to possess eagle specimens for exhibition purposes, including mounts, feathers, parts, eggs, and nests. These permits are limited under the Eagle Protection Act to public museums, public scientific societies, or public zoological parks (16 U.S.C. 668a). We propose a regulatory authorization for public museums, public scientific societies, and public zoological parks to possess eagle specimens for exhibition use without a permit. This regulatory authorization does not include any taking of eagles, and any eagle specimens must have been legally obtained under the terms of a part 22 eagle permit. These permits have straightforward issuance criteria and conditions that are standard for all permittees. The majority of these permittees are government entities that display a single, mounted eagle in a visitor center or building entrance. To reduce the administrative burden for these public entities and the Service, we propose to remove the permit requirement and instead authorize possession under a regulatory authorization. We propose to create a new subpart in part 22 for this regulatory authorization that will have a similar structure to part 21, which sets forth regulations for the exceptions to permit requirements in subpart B.

We anticipate there would be no change in the availability of eagles for members of federally recognized Tribes as a result of this proposed action. Nearly all eagle specimens for exhibition use are already in possession. Any eagle specimens newly acquired for exhibition use must be approved by the National Eagle Repository as not suitable for Native American distribution. Authorization from the National Eagle Repository must accompany any newly acquired specimens before transfer to exhibition use.

The Eagle Protection Act (16 U.S.C. 668a) restricts authorization for scientific or exhibition purposes to ''public museums, scientific societies, and zoological parks.'' The Service uses a plain-English interpretation of ''museum'' and ''zoological park,'' by which a public museum is a building or place where objects are curated for and displayed to the public, and a zoological park is a place where living animals are kept in enclosures and displayed to the public. The Eagle Protection Act's inclusion of the term ''scientific societies'' does not readily have a plain-English interpretation. The Service proposes to adopt the following interpretation: A public scientific society is any entity that, as part of its purpose, promotes public knowledge about science or conducts research and makes data and findings available to the public. Public scientific societies may include government agencies, schools and universities, and nongovernmental organizations. Qualifying as a public museum, scientific society, or zoological park is only one of the criteria necessary to conduct eagle exhibition or eagle scientific collecting activities. We would continue to maintain appropriate standards for evaluating an entity's qualifications relative to the authorization requested.

Licensed Veterinarians Authorization (Proposed for Revision)

A regulatory authorization currently authorizes licensed veterinarians to provide veterinary care of sick, injured, and orphaned migratory birds including eagles (50 CFR 21.12(c)). We propose to redesignate this regulation to 50 CFR 21.20 and make the following revisions: (1) edit the existing language to improve readability, (2) clarify what is included in veterinary care, and (3) clarify expectations regarding disposition of live and dead migratory birds. The proposed language is consistent with the rehabilitation regulations (50 CFR 21.76).

Mortality Event Authorization (Proposed for Revision)

Regulations currently authorize natural resource and public health agency employees to address avian disease outbreaks (50 CFR 21.12(b)(2)) without a permit. We propose to redesignate this regulation to 50 CFR 21.32 and make the following revisions. We propose to clarify the existing language and expand the current scope of this authorization from disease outbreaks to all mortality events. A mortality event is an unforeseen event that kills an unexpectedly high number of individual birds in a particular location over a short period of time. The dead birds must exhibit similar pathological behavior prior to death or similar clinical signs. We propose to adopt the U.S. Geological Survey—National Wildlife Health Center's interpretation of ''unexpectedly high'' as five or more individuals (see *usgs.gov/centers/nwhc*). The National Wildlife Heath Center is the science lead in the Department of Interior on the detection, control, and prevention of wildlife disease in the United States. The primary use of this regulatory authorization is to respond to avian infectious disease outbreaks, such as avian influenza or West Nile virus. Timely response is necessary to identify the cause of the outbreak, contain its spread, and reduce exposure and potential infection of humans, livestock, other domestic animals, and wildlife.

We propose to expand this authorization from infectious disease outbreaks to include other mortality events because many mortality events (*e.g.,* those caused by toxins or mass starvation) may have an unclear cause at the time of discovery. A timely response is necessary to ensure public safety until the cause can be determined. The proposed authorization also clarifies that take of asymptomatic birds for activities such as disease monitoring is not covered by this regulatory authorization. Instead, agencies conducting disease monitoring of asymptomatic, live birds should obtain a scientific collecting permit (50 CFR 21.73).

Natural Resource Agency Employees Authorization

Service and State wildlife agency employees are authorized under special purpose permits (50 CFR 21.95) to salvage birds, use migratory bird specimens for educational programs, transport birds to medical care, and relocate birds in harm's way. The Service proposes to establish a new regulatory authorization for these activities at 50 CFR 21.34 and no longer require a permit. We propose this authorization to better facilitate agency employees conducting routine activities and reduce the administrative burden of the permit process on the Service and other natural resource agencies. The proposed regulation adopts the same permit conditions that the Service currently uses when issuing permits to employees of the Service and State wildlife agencies under the special purpose regulations at 50 CFR 21.95.

Currently, the Service issues permits to Federal and State wildlife agencies to conduct the activities as just described. The proposed authorization also includes natural resource agency employees of U.S. Territories and federally recognized Tribes. Most of the activities authorized under current permits are covered by the other proposed authorizations in subpart B, such as salvage (proposed 50 CFR 21.16), educational use (proposed 50 CFR 21.18 and 22.15), transportation to medical care (50 CFR 21.76), and relocation from inside of structures (proposed 50 CFR 21.14). This proposed authorization would authorize natural resource employees to possess sick, injured, or orphaned birds for up to 72 hours for transport to care and to humanely euthanize birds, if necessary. Natural resource agency employees are often in remote areas and are in the best position to provide humane care, without increasing bird stress by transporting long distances. Consistent with current permit conditions, this proposed regulatory revision would authorize the salvage of birds and relocation when birds or humans are at risk.

Law Enforcement Authorization (Proposed for Revision)

Regulations currently authorize Department of the Interior law enforcement personnel (50 CFR 21.12(a)) to conduct certain activities without a permit. We propose to redesignate this regulation to 50 CFR 21.40 and clarify that this authorization pertains to all law enforcement agencies authorized to enforce laws consistent with the MBTA or Eagle Protection Act. This authorization would be limited to personnel performing official law enforcement duties. We also propose allowing law enforcement agents to temporarily designate authority to another individual to acquire, possess, transport, or dispose of migratory birds on behalf of law enforcement in certain circumstances—for example, to pick up and dispose of a deceased bird in a remote area. The temporary delegation should be recorded in writing by the law enforcement agent delegating the authority. The document must record the name and contact information of both the individual authorized and the authorizing agent as well as the dates authorized and clearly explain the extent of the actions the individual is authorized to perform.

Humane and Healthful Conditions Definition

Regulations currently require any live wildlife to be possessed under ''humane and healthful conditions'' (50 CFR 13.41). We propose adding a definition to the definitions sections for migratory bird permits (50 CFR 21.6) and eagle permits (50 CFR 22.6) to define ''humane and healthful conditions'' as the phrase applies to the possession of live migratory birds and live bald eagles and golden eagles. The definition would be identical for both part 21 and part 22. The proposed definition includes both temporary (*e.g.,* trap–release activities) and long-term (*e.g.,* rehabilitation or exhibition activities) possession. The proposed definition also clarifies that humane and healthful conditions include all aspects of possession and care, such as handling, housing, feeding, watering, sanitation, ventilation, shelter, protection from predators and vermin, enrichment, veterinary care, and euthanasia.

Rehabilitation Regulations

We propose to remove the reference to the *Minimum Standards for Wildlife Rehabilitation* (2000) as guidelines for evaluating the adequacy of caging dimensions (50 CFR 21.76(e)(1)). The National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council recently published an updated *Standards for Wildlife Rehabilitation* (2021). Rather than proposing to amend the regulation each time the National Wildlife Rehabilitators Association updates its standards, we will propose to develop a

public policy that identifies *Standards for Wildlife Rehabilitation* (2021) as the Service's standard guidance document for use in evaluating humane and healthful conditions at rehabilitation facilities.

Airborne Hunting Act Regulations

The harassment of migratory birds does not require authorization under the MBTA. However, the Airborne Hunting Act (AHA; 16 U.S.C. 742j–1) prohibits the use of an aircraft to harass any wildlife, which includes migratory birds (50 CFR 19.11). Current regulations authorize the harassment of migratory birds under the AHA (50 CFR 19.21), but authorization is currently limited to activities that can be authorized under depredation permits (50 CFR 21.100).

The regulations in 50 CFR part 19 have not been substantively revised since they were issued on January 4, 1974. The AHA defines ''aircraft'' as ''any contrivance used for flight in the air'' (16 U.S.C. 742j–1(c)). In 1974, the meaning of an ''aircraft'' was limited to vehicles controlled by an onboard pilot. More recently, the meaning of ''aircraft'' has expanded to reflect the use of unmanned vehicles including drones.

Unmanned Aircraft Systems (UAS) are classified as ''aircraft'' by the U.S. Department of the Interior's Office of Aviation Services (Information Bulletin 13–05) and meet the AHA's definition; however, they are functionally very different from onboard-piloted aircraft. The use of UAS has expanded greatly and was understandably not envisioned at the time of the 1974 rulemaking. Many uses of UAS are beneficial to migratory bird conservation and safer for humans but fall outside the scope of depredation permits. For example, seabird research on rocky outcrops and islands has been limited because human access to these areas is difficult or unsafe. Human presence can also disturb the colony. However, UAS have been successfully used in these environments to count seabirds and monitor success. Raptors nests on human infrastructure such as towers provide another example where UAS use is beneficial to both humans and birds. Project proponents often must alter work on infrastructure if a nest has eggs or chicks present; however, humans climbing infrastructure to identify nest status can be unsafe for humans and birds if adult birds attempt to defend the nest. UAS can be used to quickly view into the nest and determine nest status. The Service considers use of UAS in both of these examples to be better for migratory birds, safer for humans, and also outside the scope of what can currently be permitted under depredation permits.

We propose to continue authorizing aircraft use (including UAS use) that may potentially harass migratory birds under migratory bird permits or eagle permits. However, we propose to expand this authorization to include any appropriate part 21 or part 22 permit, not just depredation permits. This proposed change will provide the necessary mechanisms to authorize the new and emerging uses of UAS that are consistent with the AHA's exception for permits that authorize ''administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops'' (16 U.S.C. 742j–1(b)(1)).

Disqualifying Factors

Part 13 describes general permit procedures, including issuance of permits (§ 13.21). This regulation includes factors that disqualify a person from receiving a permit. These factors include conviction of a felony violation of the MBTA or Eagle Protection Act, prior revocation of permits for certain reasons, failure to pay fees and fines, and failure to submit reports. The Service considers regulatory authorizations to constitute a permit, as defined in 50 CFR 10.12. The regulation is the document issued by the Service which describes, authorizes, and limits the activity and is signed by the authorized official, the DOI Assistant Secretary of Fish, Wildlife, and Parks. To clarify that disqualifying also apply to regulatory authorizations, we propose adding § 21.5 and § 22.5, which would adopt the part 13 disqualifying factors for all activities authorized by permit, including regulatory authorizations in part 21 and part 22.

Editorial Corrections

Because we are redesignating the regulatory authorizations to new CFR sections, we need to correct cross-references to these sections in other parts of our regulations. Affected sections include rehabilitation permits (§ 21.76), falconry standards and falconry permitting (§ 21.82), raptor propagation permitting (§ 21.85), and eagle scientific and exhibition permits (§ 22.50). We are not making any changes to the falconry regulations or raptor propagation regulations beyond updating regulation references. These proposed updates are administrative in nature; they do not change the species protected by the regulations or the permit requirements or any other requirements of the MBTA or its implementing regulations.

Public Availability of Comments

The public comment period begins with the publication of this document in the **Federal Register** and will continue through the date set forth above in **DATES**. Written comments that are received or postmarked by that date will become part of the public record associated with this proposed rulemaking action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the 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.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 and calls for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small

government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action would not have an economic impact on any small entities. This proposed rule is deregulatory in nature. It would expand the scope of current regulatory authorizations as well as eliminate current permits by creating new authorizations. Thus, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This is not a major rule under SBREFA (5 U.S.C. 804(2)). This proposed rule would not have an annual effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The regulatory revisions would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the proposed rule would not have significant takings implications. This proposed rule does not contain a provision for taking of private property, so a takings implication assessment is not required. This proposed rule is deregulatory in nature. It would expand the scope of current authorizations as well as eliminate current permits by creating new authorizations.

Federalism

This proposed rule would not have sufficient federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132. It would not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the proposed regulations changes.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule contains new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. We will ask OMB to review and approve the information collection requirements contained in this rulemaking related to permit applications, reports, and related information collections under the MBTA.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(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) Ways to 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 proposed rulemaking are a matter of public record. 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.

The information that we collect to determine eligibility to possess migratory birds and eagles by the general public, educators, and government agencies is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity under the MBTA and Eagle Protection Act. The proposed new information collection requirements identified below require approval by OMB:

1. *Written Petitions—Request for Waiver from Disqualification (50 CFR 21.5)*—A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) disqualifies any such person from exercising the authorization granted by regulation or permit under part 21, unless such disqualification has been expressly waived by the Director in response to a written petition.

2. *Obtaining Landowner Permission to Access Land (50 CFR 21.16)*—Regulations do not grant land access. Authorized individuals requiring access are responsible for obtaining permission from landowners when necessary and for complying with other applicable laws.

3. *3rd Party Notifications—National Eagle Repository (50 CFR 21.16)*—Authorized individuals who salvage a whole bald eagle or golden eagle (eagle), part of an eagle (*e.g.,* wing or tail), or feathers must immediately contact the National Eagle Repository and follow the Repository's instructions on transferring the eagle, parts, or feathers to the Repository.

4. *3rd Party Notifications—Transfer of Live Migratory Birds (50 CFR 21.20)*—Within 48 hours after hospitalization is no longer required, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator. If unable to transfer a bird within that time, authorized individuals must contact their regional migratory bird

permit office for assistance in locating a permitted migratory bird rehabilitator, authorization to continue care, or a recommendation to euthanize the bird.

5. *3rd Party Notifications—Endangered and Threatened Wildlife (50 CFR 21.20)*—Licensed veterinarians must notify the appropriate Ecological Services Office within 24 hours of receiving a migratory bird that is also on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

6. *Requests for Written Authorization—National Eagle Repository (50 CFR 22.15)*—Eagle specimens salvaged from the wild after [EFFECTIVE DATE OF FINAL RULE] must have written authorization from the National Eagle Repository for exhibition use.

7. *Agency Designation Letter (50 CFR 21.34)*—Individuals under the direct supervision of an agency employee (*e.g.,* volunteers or agents under contract to the agency) may, within the scope of their official duties, conduct the activities authorized by this authorization. An authorized individual must have a designation letter from the agency describing the activities that may be conducted by the individual and any date and location restrictions that apply.

8. *Law Enforcement Authorization (50 CFR 21.40)*—Law enforcement personnel may designate authorization to non-law-enforcement personnel to acquire, possess, transport, or dispose of migratory birds on the behalf of law enforcement under this authorization. Designations must include the name and contact information of the individual designated, dates valid, activities authorized, and name and contact information of the authorizing agent.

9. *3rd Party Notifications—Federally Permitted Rehabilitator (50 CFR 21.14, 21.34)*—Authorized individuals must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator's instructions when:

a. § 21.14—Any birds removed by trapping must be immediately released to the wild in a humane and healthful manner, unless the bird becomes exhausted, ill, injured, or orphaned. In that case, the authorized individual must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator's instructions.

b. § 21.14—Authorized individuals may remove nests, eggs, and nestlings from the interior of a human-occupied building or structure. They are encouraged to seek the assistance of a federally permitted migratory bird rehabilitator or their regional Migratory Bird Permit Office prior to removing eggs or nestlings.

c. § 21.34—Natural resource agency employees may transport sick, injured, or orphaned birds in accordance with § 21.76(a). If transport is not feasible within 24 hours, they must follow the instructions of a federally permitted migratory bird rehabilitator to provide supportive care, retain in an appropriate enclosure for up to 72 hours, or euthanize the birds.

10. *Tagging Requirements (50 CFR 21.16, 21.18)*—

a. § 21.16—Specimens intended for donation with the date, location of salvage, and the name and contact information of the person who salvaged the specimen. The tag must remain with the specimen.

b. § 21.18—Each migratory bird specimen must remain tagged with the species, date, location, name of the donor, and donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs.

c. § 22.15—Each eagle specimen must remain tagged with the species, date, location, name of the donor, and the donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs.

11. *Law Enforcement Notifications (50 CFR 21.16, 21.32)*—

a. § 21.16—Authorized individuals must notify the Service Office of Law Enforcement if illegal activity is suspected or if five or more birds are found dead and there is a risk of mortality due to disease.

b. § 21.32—Authorized individuals investigating mortality events must notify the Service Office of Law Enforcement if illegal activity is suspected.

12. *Verification of Legal Acquisition (50 CFR 21.18, 22.15)*—

a. § 21.18—Migratory bird specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. Authorized individuals are responsible for ensuring specimens were legally acquired.

b. § 22.15—Bald eagle and golden eagle specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. Authorized individuals are responsible for ensuring specimens were legally acquired.

13. *Records Retention Requirements (50 CFR 21.16, 21.18, 21.20, 22.15)*—

a. § 21.16—Authorized individuals must maintain records of all donated birds, including eagles sent to the National Eagle Repository for 5 years. Records must include species, specimen type, date, location salvaged, and recipient. At any reasonable time upon request by the Service, the authorized individual must allow the Service to inspect any birds held under this authorization and to review any records kept.

b. § 21.18—Authorized individuals must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, the authorized individual must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

c. § 21.20—Licensed veterinarians must keep records for 5 years of all migratory birds held and treated under this authorization, including those euthanized. Records must include the species of bird, the type of injury, the date of acquisition, the date of death, cause of death, and disposition (*e.g.,* live bird transferred, remains destroyed, or remains donated). Authorized individuals must present upon request of inspection such specimens and documents at any reasonable time.

d. § 21.34—Agencies must keep records for 5 years of activities conducted under this authorization. The records must include the species and number of birds, the type of activity, date, and disposition.

e. § 22.15—Authorized individuals must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. Exhibition use of specimens under the regulations in this section authorizes the Service to inspect any eagle specimens held under this regulatory authorization and review any records kept at any reasonable time. Authorized individuals must present such specimens and documents for inspection upon request.

14. *3rd Party Notifications—Educational Programs (50 CFR 21.18)*—

a. § 21.18—Migratory bird specimens must be used for public educational programs or held for public archival purposes. Programs must include information about migratory bird ecology, biology, or conservation.

b. § 21.18—Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes.

c. § 22.15—Eagle specimens must be used for public educational programs or held for public archival purposes.

Programs must include information about eagle ecology, biology, or conservation.

15. *Notification Requirement—States (50 CFR 19.31)*—Upon issuance of a permit by a State to a person pursuant to this section, the issuing authority will provide immediate notification to the Special Agent in Charge having jurisdiction.

16. *Notification Requirement—States (50 CFR 19.31)*—Any State issuing permits to persons to engage in airborne hunting or harassing of wildlife or any State whose employees or agents participate in airborne hunting or harassing of wildlife for purposes of administering or protecting land, water, wildlife, livestock, domestic animals, human life, or crops, shall file with the Director an annual report on or before July 1 for the preceding calendar year ending December 31.

Title of Collection: Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies; 50 CFR parts 21 and 22.

OMB Control Number: 1018–New.

Form Numbers: None.

Type of Review: New.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 4,001.

Total Estimated Number of Annual Responses: 4,001.

Estimated Completion Time per Response: Varies from 15 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 3,111.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–BC76 in the subject line of your comments.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Department regulations at 43 CFR part 46. The proposed action is categorically excluded from further NEPA consideration under the departmental exclusion at 43 CFR 46.210 and as listed in 516 DM 8.5(C)(1): ''the issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter I, Subchapter B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.'' The Service considers regulatory authorizations, also called permit exceptions, to be a type of permit. Permit is defined in 50 CFR 10.12, and the Service considers the regulation to be the document issued by the Service which describes, authorizes, and limits the activity. In the case of regulations, the authorized official is the DOI Assistant Secretary of Fish, Wildlife, and Parks. Therefore, promulgation of a regulatory authorization that causes no or negligible environmental disturbance falls within the categorical exclusion for permits.

Endangered and Threatened Species

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Secretary [of the Interior] shall review other programs administered by the Secretary and utilize such programs in furtherance of the purposes of this Act (16 U.S.C. 1536(a)(1)). It further states that the Federal agency must ''ensure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). This proposed rule would not affect endangered or threatened species or critical habitats.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that this rule would not interfere with Tribes' abilities to manage themselves, their funds, or Tribal lands. We add provisions to expand Tribal authorization and self-governance.

Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use, and requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule is not a significant regulatory action under E.O. 13211, and no statement of energy effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

50 CFR Part 19

Aircraft, Fish, Hunting, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR, as set forth below:

PART 19—AIRBORNE HUNTING

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Fish and Wildlife Act of 1956, 85 Stat. 480, as amended, 86 Stat. 905 (16 U.S.C. 742a–j–1).

■ 2. Revise § 19.21 to read as follows:

§ 19.21 Limitation on Federal permits.

No Federal permits will be issued to authorize any person to hunt, shoot, or harass any wildlife from an aircraft, except for Federal permits issued under part 21 or part 22 of this subchapter.

PART 21—MIGRATORY BIRD PERMITS

■ 3. The authority citation for part 21 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—Introduction and General Requirements

■ 4. Amend § 21.4 by revising the section heading and paragraph (b) to read as follows:

§ 21.4 Scope of regulations.

* * * * *

(b) The regulations in this part, except for § 21.16 (salvage authorization), § 21.20 (licensed veterinarian authorization), § 21.32 (mortality event authorization), § 21.34 (natural resource agency employees authorization), § 21.40 (law enforcement authorization), § 21.70 (banding or marking), § 21.76 (rehabilitation permits), and § 21.82 (falconry standards and falconry permitting), do not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter.

* * * * *

■ 5. Add § 21.5 to read as follows:

§ 21.5 Disqualifying factors.

A person is disqualified from exercising the authorization granted by permit, including regulatory authorizations, under part 21, unless waived by the Director in response to a written petition, if the person:

(a) Has been convicted or plead guilty or nolo contendere for a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(b) Has had the same or similar authorization revoked (§ 13.28) within the last 5 years.

(c) Has failed to pay required fees, penalties, or other money owed to the United States. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to pay, the Service notifiesy the person in writing of permanent disqualification.

(d) Has failed to submit timely, accurate, or valid reports as required, as long as the deficiency exists. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to meet reporting requirements, the Service notifies the person in writing of permanent disqualification.

■ 6. Amend § 21.6 by adding a definition for ''Humane and healthful conditions'' in alphabetic order to read as follows:

§ 21.6 Definitions.

* * * * *

Humane and healthful conditions means using methods supported by the best available science that minimize fear, pain, stress, and suffering of a migratory bird held in possession. This definition applies during capture, possession (temporary or long term), or transport. Humane and healthful conditions pertain to handling (*e.g.,* during capture, care, release, restraint, and training), housing (whether temporary, permanent, or during transport), shelter, feeding and watering, sanitation, ventilation, protection from predators and vermin, and, as applicable, enrichment, veterinary care, and euthanasia.

* * * * *

Subpart B—Exceptions to Permit Requirements

■ 7. Add § 21.14 to read as follows:

§ 21.14 Birds in buildings authorization.

(a) Any person may, without a permit, humanely remove a migratory bird from the interior of a residence, business, or similar human-occupied building or structure under the conditions set forth in this section. This authorization does not apply to birds or nests on the exterior of buildings, such as siding or eaves, or to structures that are not human-occupied, such as barns or bridges.

(b) This authorization is subject to the following conditions:

(1) *Humane conditions.* Any trapping, handling, transporting, or release of migratory birds must be conducted under humane and healthful conditions as defined in § 21.6. You may not use adhesive traps (such as glue traps) or any other method of capture likely to harm the bird. For technical assistance, contact your regional Migratory Bird Permit Office, USDA–Wildlife Services, or a federally permitted migratory bird rehabilitator.

(2) *Release.* Any birds removed by trapping must be immediately released to the wild in a humane and healthful manner, unless the bird becomes exhausted, ill, injured, or orphaned. In that case, immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator's instructions.

(3) *Nests.* You may remove nests, eggs, and nestlings from the interior of a human-occupied building or structure. You are encouraged to seek the assistance of a federally permitted migratory bird rehabilitator or your regional Migratory Bird Permit Office prior to removing eggs or nestlings. When possible, prevent the need for take of occupied nests by waiting until nestlings fledge. You may transport eggs or nestlings to a federally permitted migratory bird rehabilitator, if the rehabilitator recommends that you do so. Otherwise, you may humanely destroy eggs or euthanize nestlings following the Avian Veterinary Medical Association Guidelines for the Euthanasia of Animals or an equivalent process.

(4) *Prevention.* To the degree feasible, you must prevent birds from reentering buildings or structures by taking such actions as patching holes or installing bird exclusion devices. Exclusion devices must be regularly monitored, maintained, and repaired to ensure they remain effective and to prevent entrapment, injury, or death.

(5) *Disposal.* You may not lethally take migratory birds, except as authorized for chicks and eggs in paragraph (b)(3) of this section. If your actions to remove the trapped migratory bird are likely to result in lethal take of adult birds, you must first obtain a Federal migratory bird permit. If you otherwise comply with the requirements of this section and a bird you are trying to remove dies, you must immediately dispose of the remains by donation to an entity authorized to possess the bird by permit or regulatory authorization, or by destroying the remains in accordance with Federal, State, and local laws and ordinances.

(c) Additional authorization is required for bald eagles, golden eagles, and species on the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

(d) You must also comply with any Federal, State, Tribal, or Territorial requirements that apply to removing migratory birds from buildings.

■ 8. Add § 21.16 to read as follows:

§ 21.16 Salvage authorization.

The regulations in this section authorize salvage activities and provide an exception to permit requirements for these activities.

(a) *Salvage of migratory birds.* Any person may salvage migratory bird specimens under the conditions set forth in this section. Specimens include whole birds found dead, parts, and feathers, including bald eagles and golden eagles. Inactive nests and

nonviable eggs, except for those of bald eagles or golden eagles, may also be salvaged under the regulations in this section. This authorization does not apply to live birds, viable eggs, or active nests.

(1) All salvaged specimens must be disposed of within 7 calendar days.

(2) You must tag each specimen intended for donation with the date, location of salvage, and the name and contact information of the person who salvaged the specimen. The tag must remain with the specimen.

(3) Nonviable eggs may not be salvaged during breeding season unless you are sufficiently skilled and able to discern viable eggs from nonviable eggs. Salvage of viable eggs is not authorized.

(4) If you encounter a migratory bird with a Federal band, you must report the band to the U.S. Geological Survey Bird Banding Laboratory.

(b) *Disposition of bald eagles and golden eagles.* (1) If you salvage a whole bald eagle or golden eagle (eagle), part of an eagle (*e.g.,* wing or tail), or feathers, you must immediately contact the National Eagle Repository and follow the Repository's instructions on transferring the eagle, parts, or feathers to the Repository.

(2) If you salvage an eagle specimen that are not accepted by or the National Eagle Repository provides written authorization for donation of eagle specimen type listed in paragraph (b)(1) of this section, you may donate specimens to a public museum, public scientific society, or public zoological park authorized to receive eagle specimens for scientific or exhibition purposes under a valid permit authorization (50 CFR 22.15) or permit (50 CFR 22.50).

(3) If not disposed of in accordance with the regulations in paragraphs (b)(1) or (2) of this section, eagle specimens must be disposed of at the direction of the Service Office of Law Enforcement. Personal use is not authorized. Eagles may not be held in possession for more than 7 calendar days and may not be sold, bartered, or offered for purchase, sale, or barter.

(c) *Disposition of all other migratory birds.* (1) Except for bald eagles or golden eagles, migratory bird specimens may be disposed of by donation to any person or institution authorized to receive them under a valid permit or regulatory authorization.

(2) If not donated, migratory bird specimens must be disposed of by destroying specimens in accordance with Federal, State, and local laws and ordinances. Personal use is not authorized. Birds, parts, nests, and eggs may not be held in possession for more than 7 calendar days and may not be purchased, sold, bartered, or offered for purchase, sale, or barter.

(d) *Records.* You must maintain records of all donated birds, including eagles sent to the National Eagle Repository for 5 years. Records must include species, specimen type, date, location salvaged, and recipient. At any reasonable time upon request by the Service, you must allow the Service to inspect any birds held under this authorization and to review any records kept.

(e) *Other requirements.* Additional Federal, State, Tribal, or Territorial permits may be required. This authorization does not grant land access. You are responsible for obtaining permission from landowners when necessary and for complying with other applicable laws.

(f) *Reporting to law enforcement.* You must notify the Service Office of Law Enforcement (see 50 CFR 10.22 for contact information) if you suspect birds were illegally killed or if five or more birds are found dead and there is a risk of mortality due to disease.

■ 9. Add § 21.18 to read as follows:

§ 21.18 Educational use of specimens authorization.

(a) *Scope.* For conservation education purposes, public entities (''public'' as defined in 50 CFR 10.12) are authorized to possess lawfully acquired migratory bird specimens, including whole bird remains, parts, feathers, nests, and eggs, as described in the regulations in this section. This authorization does not apply to live birds, viable eggs, active nests, or bald eagles or golden eagles (see 50 CFR 22.15).

(b) *Acquisition.* Migratory bird specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. You are responsible for ensuring specimens were legally acquired.

(c) *Disposition.* You may dispose of migratory bird specimens by donation to any person or institution authorized to receive them under a valid permit or regulatory authorization. Otherwise, you must dispose of migratory bird specimens by destroying them in accordance with Federal, State, or local laws and ordinances.

(d) *Possession.* Each migratory bird specimen must remain tagged with the species, date, location, name of the donor, and donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs. Migratory bird specimens may be taxidermied by a federally permitted taxidermist (§ 21.63) and returned to you. As part of their official duties, employees and volunteers of a public entity may prepare specimens for your organization without a Federal taxidermy permit.

(e) *Educational programs.* Migratory bird specimens must be used for public educational programs or held for public archival purposes. Programs must include information about migratory bird ecology, biology, or conservation. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes. Specimens may be used for observational research without additional authorization; however, removal of samples requires additional authorization (§ 21.73).

(f) *Prohibitions.* Specimens may not be purchased, sold, or bartered. You must not display any migratory bird specimens in a manner that implies personal use, such as inclusion in millinery, ornamental, or similar objects.

(g) *Records.* You must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, you must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

(h) *Other laws.* You must comply with any Federal, State, Tribal, or Territorial requirements that apply to possession of migratory bird specimens for educational use.

■ 10. Add § 21.20 to read as follows:

§ 21.20 Licensed veterinarian authorization.

(a) Any person who finds a sick, injured, or orphaned migratory bird, including bald eagles and golden eagles, may, without a permit, take possession of the bird for immediate transport to a licensed veterinarian or federally permitted migratory bird rehabilitator.

(b) Licensed veterinarians are authorized to take the following actions without a permit:

(1) For the purposes of providing veterinary care, take from the wild or receive from any person sick, injured, or orphaned migratory birds, including bald eagles and golden eagles.

(2) Perform diagnostics as well as surgical and nonsurgical procedures necessary for triage, including euthanizing migratory birds (See § 21.76(e)(4)(iii)–(iv)). Amputations and other procedures that could render a bird non-releasable may not be conducted under this authorization.

(3) Release migratory birds that have been in care less than 24 hours to suitable habitat in the wild.

(4) Transfer birds to a federally permitted migratory bird rehabilitator or licensed veterinarian.

(5) Dispose of dead migratory birds in accordance with § 21.76(e)(4)(vi) and dispose of dead bald eagles and golden eagles in accordance with § 21.76(e)(4)(vi)(C).

(c) Licensed veterinarians are not authorized to release to the wild migratory birds held in care longer than 24 hours. Migratory birds may not be determined non-releasable under this authorization. These activities require a rehabilitation permit (§ 21.76).

(d) Within 48 hours after hospitalization is no longer required, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator. If unable to transfer a bird within that time, you must contact your regional migratory bird permit office for assistance in locating a permitted migratory bird rehabilitator, authorization to continue care, or a recommendation to euthanize the bird.

(e) Migratory birds in possession under this authorization must be maintained in humane and healthful conditions as defined in § 21.6.

(f) Licensed veterinarians must notify the appropriate Ecological Services Office within 24 hours of receiving a migratory bird that is also on the List of Endangered and Threatened Wildlife (50 CFR 17.11). See 50 CFR 2.2 for a list of Service regional offices.

(g) Licensed veterinarians must keep records for 5 years of all migratory birds held and treated under this authorization, including those euthanized. Records must include the species of bird, the type of injury, the date of acquisition, the date of death, cause of death, and disposition (*e.g.,* live bird transferred, remains destroyed, or remains donated). Upon request of inspection, individuals must present specimens and records at any reasonable time.

■ 11. Add § 21.32 to read as follows:

§ 21.32 Mortality event authorization.

(a) Natural resource and public health employees performing official duties are authorized without a permit to collect, possess, transport, and dispose of migratory birds found sick, injured, or dead as part of a mortality event. A mortality event is an unforeseen event that kills an unexpectedly high number of birds in a particular location over a short period of time with the birds all exhibiting similar pathological behavior or clinical signs. Birds or their parts may be analyzed for cause of death.

(b) Natural resource and public health employees include employees of:

(1) Government natural resource agencies;

(2) Government public health agencies;

(3) Government agricultural agencies; and

(4) Laboratories working on behalf of such agencies.

(c) Sick or injured birds may be humanely euthanized or transported to a federally permitted rehabilitator or licensed veterinarian for care or euthanasia. If euthanized, remains may be analyzed for cause of death.

(d) Take and possession of uninjured or asymptomatic birds, including for disease monitoring, is not covered under this authorization and requires a scientific collection permit (§ 21.73).

(e) Notify the Service Office of Law Enforcement (see 50 CFR 10.22 for contact information) if illegal activity is suspected.

■ 12. Add § 21.34 to read as follows:

§ 21.34 Natural resource agency employees authorization.

(a) *Excepted activities.* While performing their official duties, employees of Federal, State, Territorial, and federally recognized Tribal natural resource agencies may conduct the following activities without a permit:

(1) *Salvage.* Natural resource agency employees may salvage migratory bird remains found dead in accordance with the salvage authorization (§ 21.16).

(2) *Educational use.* Natural resource agency employees may possess migratory bird specimens for conservation education programs in accordance with the authorizations for use of educational specimens (§ 21.18) and the exhibition of eagle specimens (50 CFR 22.15). A permit is required to possess live birds, viable eggs, or active nests for educational use.

(3) *Transport.* Natural resource agency employees may transport sick, injured, or orphaned birds in accordance with § 21.76(a). If transport is not feasible within 24 hours, follow the instructions of a federally permitted migratory bird rehabilitator to provide supportive care, retain in an appropriate enclosure for up to 72 hours, or euthanize the birds.

(4) *Relocate.* Natural resource agency employees may trap and relocate migratory birds, nests, eggs, and chicks in accordance with § 21.14. Employees are authorized to conduct these activities to remove birds from structures or whenever birds or humans are at risk if birds are not relocated. Additional authorization is required for bald eagles, golden eagles, or migratory birds on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

(b) *Volunteers and contractors.* Individuals under the direct supervision of an agency employee (*e.g.,* volunteers or agents under contract to the agency) may, within the scope of their official duties, conduct the activities authorized by this authorization. An authorized individual must have a designation letter from the agency describing the activities that may be conducted by the individual and any date and location restrictions that apply.

(c) *Official capacity.* Employees and other authorized individuals must act within their official duties, training, and experience when conducting authorized activities, especially when handling live birds. Live birds must always be cared for under humane and healthful conditions as defined in § 21.6.

(d) *Records.* Agencies must keep records for 5 years of activities conducted under this authorization. The records must include the species and number of birds, the type of activity, date, and disposition.

■ 13. Add § 21.40 to read as follows:

§ 21.40 Law enforcement authorization.

(a) Law enforcement personnel authorized to enforce the provisions of the Migratory Bird Treaty Act (16 U.S.C. 706 and 708) or Bald and Golden Eagle Protection Act (16 U.S.C. 668b) may, in performing official duties and without a permit, take, acquire, possess, transport, and dispose of migratory birds (including bald eagles and golden eagles) whether alive or dead, including their parts, nests, or eggs.

(b) Law enforcement personnel may designate non-law-enforcement personnel to acquire, possess, transport, or dispose of migratory birds on the behalf of law enforcement under this authorization. Designations must include the name and contact information of the individual designated, dates valid, activities authorized, and name and contact information of the authorizing agent.

Subpart C—Specific Permit Provisions

■ 14. Amend § 21.76 by revising paragraphs (a), (e)(1), and (e)(4)(vi)(A) to read as follows:

§ 21.76 Rehabilitation permits.

(a) *What is the permit requirement?* Except as provided in § 21.20, a rehabilitation permit is required to take, temporarily possess, or transport any migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird for

immediate transport to a permitted rehabilitator or licensed veterinarian.

* * * * *

(e) * * *

(1) *Facilities.* You must conduct the activities authorized by this permit in appropriate facilities that are approved and identified on the face of your permit. The Regional Migratory Bird Permit Office will authorize variations where reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless that office determines that the variation is not humane for the migratory birds. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must comply with the following criteria:

* * * * *

(4) * * *

(vi) * * *

(A) You may donate dead birds and parts thereof, except threatened and endangered species, and bald and golden eagles, to persons authorized by permit to possess migratory bird specimens or exempted from permit requirements under the regulations in subpart B of this part.

* * * * *

■ 15. Amend § 21.82 by revising paragraphs (f)(12)(ii) and (v) and (f)(13)(ii) to read as follows:

§ 21.82 Falconry standards and falconry permitting.

* * * * *

(f) * * *

(12) * * *

(ii) You may donate feathers from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to have them, or to anyone exempt from the permit requirement under the regulations in subpart B of this part.

* * * * *

(v) If your permit expires or is revoked, you must donate the feathers of any species of falconry raptor except a golden eagle to any person or any institution exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess the feathers. If you do not donate the feathers, you must burn, bury, or otherwise destroy them.

(13) * * *

(ii) You may donate the body or feathers of any other species of falconry raptor to any person or institution exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess such parts or feathers.

* * * * *

■ 16. Amend § 21.85 by revising the section heading and paragraph (k)(1) to read as follows:

§ 21.85 Raptor propagation permitting.

* * * * *

(k) * * *

(1) You may donate the body or feathers of any species you possess under your propagation permit to any person or institution exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess such parts or feathers.

* * * * *

PART 22—EAGLE PERMITS

■ 17. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668–668d; 703–712; 1531–1544.

Subpart A—Introduction and General Requirements

■ 18. Add § 22.5 to read as follows:

§ 22.5 Disqualifying factors.

A person is disqualified from exercising the authorization granted by permit, including regulatory authorizations, under part 22, unless waived by the Director in response to a written petition, if the person:

(a) Has been convicted or plead guilty or nolo contendere for a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(b) Has had the same or similar authorization revoked (§ 13.28) within the last 5 years.

(c) Has failed to pay required fees, penalties, or other money owed to the United States. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to pay, the Service notifiesy the person in writing of permanent disqualification.

(d) Has failed to submit timely, accurate, or valid reports as required, as long as the deficiency exists. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to meet reporting requirements, the Service notifies the person in writing of permanent disqualification.

■ 19. Revise § 22.6 by adding a definition for ''Humane and healthful conditions'' in alphabetic order to read as follows:

§ 22.6 Definitions.

* * * * *

Humane and healthful conditions means using methods supported by the best available science that minimize fear, pain, stress, and suffering of an eagle held in possession. This definition applies during capture, possession (temporary or long term), or transport. Humane and healthful conditions pertain to handling (*e.g.,* during capture, care, release, restraint, and training), housing (whether temporary, permanent, or during transport), shelter, feeding and watering, sanitation, ventilation, protection from predators and vermin, and, as applicable, enrichment, veterinary care, and euthanasia.

* * * * *

■ 20. Add § 22.15 under a new subpart B to read as follows:

Subpart B—Exceptions to Permit Requirements

§ 22.15 Exhibition use of eagle specimens authorization.

For conservation education purposes, public museums, public scientific societies, and public zoological parks are authorized to possess lawfully acquired eagle specimens, including whole bird remains, parts, feathers, nests, and eggs as described in the regulations in this section. This authorization does not apply to live eagles or viable eggs.

(a) *Acquisition.* Bald eagle and golden eagle specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. You are responsible for ensuring specimens were legally acquired. Eagle specimens salvaged from the wild after [EFFECTIVE DATE OF FINAL RULE] must have written authorization from the National Eagle Repository for exhibition use.

(b) *Disposition.* You may dispose of eagle specimens by donation to any person or institution authorized to receive them under a valid permit or regulatory authorization. Otherwise, you must dispose of eagle specimens by destroying them in accordance with Federal, State, or local laws and ordinances.

(c) *Possession.* Each eagle specimen must remain tagged with the species, date, location, name of the donor, and the donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs. Eagle specimens may be taxidermied by a federally permitted taxidermist (50 CFR 21.63) and returned to you. As part of their official duties, employees and volunteers of a public entity may prepare specimens for your organization without a Federal taxidermy permit.

(d) *Educational programs.* Eagle specimens must be used for public educational programs or held for public archival purposes. Programs must include information about eagle ecology, biology, or conservation. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes. Specimens may be used for observational research without additional authorization; however, removal of samples requires additional authorization (§ 22.50).

(e) *Prohibitions.* Specimens may not be purchased, sold, bartered, or offered for sale or barter. You must not display any eagle specimens in a manner that implies personal use.

(f) *Records.* You must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. The Service may inspect any eagle specimens held under this regulatory authorization and review any records kept at any reasonable time. Individuals must present specimens and records for inspection upon request.

(g) *Other laws.* You must also comply with pertinent Federal, State, Tribal, or Territorial requirements.

Subpart C—Specific Eagle Permit Provisions

■ 21. Amend § 22.50 by revising the section heading and the introductory text to read as follows:

§ 22.50 Eagle scientific and exhibition permits.

We may, under the provisions of this section, issue a permit authorizing the taking, possession, transportation within the United States, or transportation into or out of the United States of lawfully possessed bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks. A permit is not required if your activities fall within the authorization for exhibition use of eagle specimens (§ 22.15). We will not issue a permit under the regulations in this section that authorizes the transportation into or out of the United States of any live bald or golden eagles, or any live eggs of these birds.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–11652 Filed 5–31–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 21 and 22

[Docket No. FWS–HQ–MB–2023–0015; FF09M31000–234–FXMB12320900000]

RIN 1018–BF58

Exhibition of Migratory Birds and Eagles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document advises the public that the U.S. Fish and Wildlife Service (Service, or we) intends to gather information necessary to develop a proposed rule for the exhibition of migratory birds and eagles. We are furnishing this advance notice of proposed rulemaking to advise other agencies and the public of our intentions and obtain suggestions and information on the scope of issues to include in the rulemaking.

DATES: We will consider comments received or postmarked on or before July 3, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit a comment by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* In the Search box, enter FWS–HQ–MB–2023–0015, which is the docket number for this action. Then click the Search button. On the resulting page, you may submit a comment by clicking on ''Comment.'' Please ensure that you have found the correct document before submitting your comments.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–HQ–MB–2023–0015, U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide. See Public Comments, below, for more information.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director—Migratory Birds, telephone: 1–703–358–2606.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated with the primary responsibility for managing migratory birds, including bald eagles and golden eagles. Our authority derives primarily from the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703–712 (MBTA), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russian Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are set forth at 50 CFR part 21.

In addition, the Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d (Eagle Act), prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act authorizes the Secretary of the Interior to issue regulations to permit the ''taking'' of eagles for various purposes, including the protection of other interests in any particular locality (16 U.S.C. 668a), provided the taking is compatible with the preservation of eagles. Regulations pertaining to eagle permits are set forth at 50 CFR part 22.

The Service currently authorizes the exhibition of migratory birds under a Special Purpose Possession Live permit (FWS Form 3–200–10c) issued under the special purpose permit regulations (50 CFR 21.95). Exhibition of bald eagles and golden eagles currently requires an Eagle Exhibition Live permit (FWS Form 3–200–14) issued under 50 CFR 22.50. On September 21, 2010, the Service proposed a permit regulation for the possession and use of migratory birds in educational programs and exhibits (75 FR 57413). Comments received on the proposed regulation were generally supportive. However, the Service did not finalize the rule due to prioritizing other rulemakings. The Service is now seeking to reinitiate a rulemaking for migratory bird exhibition and eagle exhibition. However, enough has changed in the field of exhibition that the Service is seeking public input before preparing a new proposed rule.

We intend to propose new migratory bird exhibition regulations to authorize possession of live, non-releasable or captive-bred migratory birds for use in teaching people about migratory bird conservation and ecology. We also anticipate proposal of revisions to regulations authorizing eagle exhibition (50 CFR 22.50), in particular revisions for permittees that hold migratory bird exhibition permits or hold USDA exhibition licenses. The public response we receive in response to this advance notice of proposed rulemaking will help us develop proposed regulations that

provide consistency and clarity in administration of permits for migratory bird and eagle exhibition. This includes ensuring that migratory birds, including eagles, are handled and cared for in humane and healthful conditions and held in a manner consistent with the protections afforded by the MBTA and Eagle Act.

Currently, the Service requires any individual or entity to obtain a special purpose permit that authorizes possession of one or more migratory birds and an eagle exhibition permit to exhibit one or more eagles. As part of the application process, we review the experience of the caretaker, bird enclosures, and bird husbandry practices. Each caretaker (subpermittee) and enclosure are authorized on the permit. Each bird is authorized on the permit, and a transfer request must be submitted and approved to receive or transfer a bird. The Service implemented these practices to ensure the humane care and handling of migratory birds, as other Federal regulations to ensure the humane care and handling of migratory birds did not exist at that time.

On February 21, 2023, the U.S. Department of Agriculture's Animal Care Program (USDA-Animal Care) published in the **Federal Register** (88 FR 10654) a final rule pertaining to the care of birds, which includes exhibition of migratory birds. The Service is responsible for the conservation of migratory birds. USDA-Animal Care is responsible for the humane care of animals. The Service's Migratory Birds Program and USDA-Animal Care seek to prevent conflicting regulations and minimize regulatory burden to exhibitors. The Service requests information and innovative approaches on how to best regulate the exhibition of migratory birds and exhibition of eagles, in light of the new USDA regulations. For simplicity, we use the term ''exhibition'' to refer to permits authorizing the public display of migratory birds or eagles. ''Exhibition'' includes the activities currently authorized under Migratory Bird Special Purpose Possession Live (Educational Use) permits (FWS Form 3–200–10c) as well as Eagle Exhibition permits (FWS Form 3–200–14).

Regulatory Approach Considered

To balance the roles of USDA-Animal Care and the Service's Migratory Birds Program, the Service is considering the following framework. The movement of migratory birds from the wild to exhibition would be regulated by the Service. The humane care of exhibition birds would be primarily regulated under the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*). To accomplish this, the Service would use an authorization tool called a regulatory authorization.

The Service has long authorized activities under regulatory authorizations. The origins of the regulatory authorization ''general exceptions to permit requirements'' (50 CFR 21.12) can be traced back as far as 1944. Regulatory authorizations are regulations that establish eligibility criteria and conditions for the take or possession of migratory birds by an entity without requiring a permit to conduct those activities. Regulatory authorizations can include conditions, recordkeeping, reporting, and inspection requirements but otherwise have a relatively low administrative burden and require little to no interaction with the Service. Regulatory authorizations are most appropriate for situations that have straightforward eligibility criteria, do not require case-by-case customization of conditions, and pose a low risk to migratory bird populations. Those who are eligible for a regulatory authorization must comply with the required conditions, including records and reporting requirements, and are subject to enforcement for noncompliance.

Permitting

The Service is considering promulgating a regulatory authorization clarifying that Service permit is not required to exhibit migratory birds for AWA license holders. This regulatory authorization could require additional conditions for migratory birds beyond an AWA license, but a permit would not be required. If an AWA license is not required, the Service would continue to authorize exhibition permits for migratory birds and eagles.

Question 1. What regulatory authorization conditions should the Service require in addition to AWA license conditions? Regulatory authorization conditions apply to all migratory bird exhibitors conducting activities under the regulatory authorization (*i.e.,* all AWA licensees conducting activities with migratory birds). They are not customizable to individual situations but may be applied to a subset (*e.g.,* all exhibitors with a particular species or all exhibitors with a certain number of birds). These could include handler or trainer requirements, humane handling or training methods, enclosure and enrichment requirements, etc. For example, the regulatory authorization could state: ''migratory birds may not be handled by the general public'' or ''migratory birds may be held but not otherwise touched by the general public.''

Question 2. The Service is seeking estimates of how many exhibitors are not likely to be required to or hold an AWA license. In brief, these are exhibitors with (1) four or fewer raptors including eagles, (2) no non-raptor migratory birds, and (3) no other species that require an AWA license, such as mammals (please see *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/new-bird-rule/awa-standards-for-birds* for additional information on USDA's New Bird Rule). For these exhibitors who do not hold an AWA license, we are also seeking input on potential changes to the permitting regulations, including whether the Service should continue using special purpose permits (under 50 CFR 21.95) for migratory birds or promulgate a new regulation for migratory bird exhibition. Additionally, should the Service continue to have separate permits for migratory birds and eagles, or combine exhibition authorization for migratory birds and eagles into a single permit?

Placement of Wild Birds in Exhibition

It is important that we maintain our role in reviewing the movement of birds from the wild to exhibition status. Under the regulatory authorization and exhibition permits, the Service would continue to regulate the movement of migratory birds to and from exhibition. Currently, this movement is primarily through rehabilitation patients being determined non-releasable and placed with exhibition entities. The Service is considering continuing the requirement that the transfer of any wild bird to exhibition must be approved by the Service prior to transfer. Rarely, but occasionally, it is appropriate for exhibition birds to be transferred to other permit types or released to the wild. The Service is considering continuing the requirement that the transfer from exhibition to another permit type or release to the wild must be approved by the Service prior to transfer. The Service is also considering not requiring Service approval of transfers between exhibitors.

Question 3. Should the Service continue to track transfers between exhibitors? If so, under what circumstances?

Question 4. The Service is considering being more restrictive in ensuring wild birds approved for exhibition are suitable for long-term captivity. Is this an appropriate role for the Service? Improved understanding of the effects of captivity on migratory birds suggests that captivity is not humane for many migratory birds,

especially certain wild birds and injured birds. How should the Service design the information requested and review of transfer requests to ensure birds are suitable for exhibition use without being unduly burdensome to exhibitors or the Service?

Compensation and Breeding

As part of this rulemaking, the Service is considering addressing two areas for which we frequently receive questions: compensation and breeding of exhibition birds. Service regulations currently do not specify whether compensation is authorized for exhibition activities. The Service is considering specifically authorizing compensation for exhibition activities, as increased compensation provides more funds to adequately pay staff and humanely care for birds. We are considering defining compensation to align with AWA regulations, where compensation includes payment of program fees, merchandise sales, donations, or any other economic benefits related to exhibition of migratory birds or eagles. The Service seeks feedback on this approach.

Question 5. Should there be restrictions on compensation for exhibition, and if so, under what circumstances and conditions?

Currently, the breeding of exhibition birds is prohibited. The Service seeks public comment on whether breeding of exhibition birds should be authorized, and if so, under what circumstances and conditions.

Question 6. Should the breeding of exhibition birds be authorized, and if so, under what circumstances and conditions?

Exhibition and Other Permit Types

Exhibition activities are occasionally conducted by those who hold migratory birds under other permit types, such as falconry, raptor propagation, and others. For circumstances where exhibition is not the primary use of the migratory bird, the Service is considering the following three approaches. (1) For State-licensed falconers, a regulatory authorization where no permit is required for State-licensed falconers who receive less than a set amount in compensation per calendar year for exhibition programs (*e.g.,* $1,000). (2) For falconry schools, if a falconry school holds an AWA license, then an MBTA exhibition permit is not required. If the falconry school does not hold an AWA license, an MBTA exhibition permit is required. (3) For other MBTA permittees who conduct exhibition activities, but exhibition is not the primary use of the migratory bird, the following would apply: If the permittee holds an AWA license for exhibition, then an MBTA exhibition permit is not required. If the permittee does not qualify for an AWA license, exhibition authorization can be added to the existing MBTA permit (*e.g.,* raptor propagation, waterfowl sale and disposal, etc.).

Question 7. Do the three approaches described above make sense for those unique use cases? Are there other unique cases we have not considered?

Question 8. Should the Service change practice and allow marked, individual migratory birds to be held under multiple permits? For example, a banded raptor could be authorized for falconry, raptor propagation, and exhibition.

Public Comments

Please consider the following when preparing your comments:

a. Be as succinct as possible.

b. Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.

c. State your suggestions and recommendations clearly with an expectation of what you would like the Service to do.

To promulgate a proposed rule, we will take into consideration all comments and any additional information we receive. Please note that submissions merely stating support for or opposition to the proposed action, without providing supporting information, will be noted but not considered by the Service in making a determination. We may hold workshops or informational sessions so that interested and affected people may provide further comments and input; if we do, we will provide notice of these workshops or sessions in the **Federal Register**, or on our website (*https://www.fws.gov/program/migratory-bird-permit*), or both.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Headquarters (see **ADDRESSES**, above).

Authority

The authority for this action is the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712) and the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–11653 Filed 5–31–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230525–0139]

RIN 0648–BM25

Control Date for the Northern Gulf of Maine Scallop Fishery; Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: This document announces a new control date that may be used to determine future participation in the Limited Access General Category Northern Gulf of Maine Atlantic sea scallop fishery. This document is necessary to inform interested parties that the New England Fishery Management Council is considering a future action that may affect or limit the number of participants in this fishery and that participants should locate and preserve all fishing related documents. The control date is intended to discourage speculative entry or fishing activity in the Limited Access General Category Northern Gulf of Maine scallop fishery while the Council considers how participation in the fishery may be affected.

DATES: Written comments must be received on or before July 31, 2023. June 1, 2023, shall be known as the ''control date'' for the Northern Gulf of Maine Atlantic sea scallop fishery.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0046 by the following method:

• *Electronic Submission:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0046 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

FOR FURTHER INFORMATION CONTACT: Louis Forristall, Fishery Management Specialist, 978–281–9321.

SUPPLEMENTARY INFORMATION: This notification establishes June 1, 2023, as the new control date for potential use in determining historical or traditional participation in the Limited Access General Category (LAGC) Northern Gulf of Maine (NGOM) Atlantic sea scallop fishery. Interested participants should locate and preserve all records that substantiate and verify their participation in the NGOM scallop fishery. Consideration of a control date does not commit the Council to develop any particular management regime or criteria for eligibility in the fishery. Any action to determine eligibility for the NGOM scallop fishery would require a change to the Fishery Management Plan (FMP) and would be considered through the normal Council process, including rulemaking, that would allow additional opportunities for public comment.

In 2008, Amendment 11 to the Atlantic Sea Scallop FMP (73 FR 20090; April 14, 2008) established the LAGC program and the NGOM management area. Scallop permit holders who qualified under Amendment 11 received LAGC A (Individual Fishing Quota) permits. Non-qualifiers that held a General Category permit by November 1, 2004, received LAGC B/C permits. A vessel issued an LAGC B permit (NGOM permit) could land up to 200 lb (90.8 kg) per day in the NGOM, until the NGOM total allowable catch had been reached, and a vessel issued an LAGC C permit (incidental permit) could land up to 40 lb (18.1 kg) per trip on non-scallop trips. Amendment 11 established that a vessel issued an LAGC A permit is allowed to permanently downgrade to an LAGC B/C. Further, a vessel issued an LAGC B/C can select to be issued either an LAGC B or an LAGC C permit on an annual basis.

In recent years, both scallop biomass and participation increased in the NGOM. In 2022, the Council addressed this growth by creating an 800,000-lb (362,873.9 mt) set-aside allocation for the LAGC fishery in the NGOM management area through Amendment 21 to the Scallop FMP (87 FR 1688; January 12, 2022). Amendment 21 allowed LAGC A and B permit holders to harvest up to 200 lb (90.8 kg) per day from the NGOM set-aside, and LAGC C permit holders are still allowed to harvest up to 40 lb (18.1 kg) per day while the NGOM is open for fishing. The vision statement for Amendment 21 stated that the LAGC component of the NGOM fishery would consist of ''a fleet made up of relatively small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants including vessels from smaller coastal communities'' (87 FR 1688, 1693).

Following the implementation of Amendment 21, the number of LAGC vessels accessing the NGOM continued to increase, as was expected during the development of the amendment. In 2022, there were 26 LAGC permits that switched from Incidental (LAGC C) to NGOM permits (LAGC B), whereas there were no more than 5 of these category switches in any previous year. Also in 2022, 103 LAGC A and B permits were active in the NGOM, while a total of 556 LAGC permits were issued (212 A, 159 B, and 185 C).

On January 24, 2023, the Council voted to request a control date for LAGC permit category changes in the NGOM. The Council is concerned that the number of potential permits that can switch to an LAGC B permit to access the NGOM set-aside is large compared to the number of vessels historically active in the area. The Council requested that we establish a control date as the date of publication of this Advanced Notice of Proposed Rulemaking. This action notifies the public and fishery participants of possible rulemaking, should the Council consider future action that may limit LAGC permit category changes in the NGOM.

The control date is intended to disincentivize speculative entry, investment, or fishing activity in the NGOM scallop fishery while the Council considers if and how LAGC permit category changes in the fishery may be affected. The Council may use this control date for entry or participation qualification, along with additional criteria. Performance or fishing effort after the date of publication may not be treated the same as performance or effort before the control date. The Council may choose to use different qualification criteria that do not incorporate this control date. The Council may change the control date. The Council may also choose to take no further action to limit LAGC permit category changes in the NGOM scallop fishery. This control date is only intended for use in limiting LAGC permit category changes in the NGOM scallop fishery.

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

Dated: May 25, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–11659 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 105
Thursday, June 1, 2023

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0034]

Notice of Request for Extension of Approval of an Information Collection; Importation of Beef and Ovine Meat From Uruguay and Beef From Argentina and Brazil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of beef and ovine meat from Uruguay and beef from Argentina and Brazil.

DATES: We will consider all comments that we receive on or before July 31, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0034 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0034, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of beef and ovine meat from Uruguay and beef from Argentina and Brazil, contact Dr. Lindsay Chase, Veterinary Medical Officer, Animal Product Imports, Strategy & Policy, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737–1236; (301) 851–3388; email: *lindsay.chase@usda.gov.* For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Importation of Beef and Ovine Meat From Uruguay and Beef From Argentina and Brazil.

OMB Control Number: 0579–0372.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) authorizes the Secretary of Agriculture to, among other things, prohibit or restrict the importation and interstate movement of animals and animal products into the United States to prevent the introduction of animal diseases and pests. The regulations for the importation of animals and animal products are contained in 9 CFR parts 92 through 98.

The regulations in part 94 provide the requirements for the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including foot-and-mouth disease (FMD). Among other things, the regulations in § 94.1 place certain restrictions on beef and ovine meat exported to the United States in accordance with § 94.29, when the beef or ovine meat enters a port or otherwise transits a region where FMD exists during shipment to the United States. An authorized official of the exporting region must provide the Animal and Plant Health Inspection Service (APHIS) with certification that specific conditions for importation listed in § 94.1 have been met.

Section 94.29 places certain restrictions on the importation of fresh (chilled or frozen) beef and ovine meat from Uruguay and fresh (chilled or frozen) beef from certain regions in Argentina and Brazil into the United States to prevent the introduction of FMD. These conditions involve information collection activities such as the requirement that APHIS collect, for each shipment, certification from an authorized veterinary official of the country of export that the conditions in § 94.29 have been met. For some of these conditions to be met, the facility in which the bovines and sheep are slaughtered must allow periodic on-site evaluation and subsequent inspection of its facilities. Additional information collection activities included in this extension of approval include animal identification and testing of select lambs.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the 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; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.662 hours per response.

Respondents: Authorized veterinary officials employed by the governments of Argentina, Brazil, and Uruguay, and managers of foreign facilities that process meat and meat products.

Estimated annual number of respondents: 13,100.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 27,913.

Estimated total annual burden on respondents: 18,482 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of May 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–11711 Filed 5–31–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0047]

Addition of Gabon, Guinea, and Moldova to the List of Regions Affected With Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we added Gabon, Guinea, and Moldova to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with highly pathogenic avian influenza (HPAI). These actions follow our imposition of HPAI-related restrictions on the importation of avian commodities originating from or transiting Gabon, Guinea, and Moldova as a result of the confirmation of HPAI in Gabon and Guinea, and reports of HPAI from the veterinary authorities of Moldova in the country.

DATES: Gabon, Guinea, and Moldova were added to the list of regions APHIS considers to be affected with HPAI, effective respectively on May 23, 2022; June 8, 2022; and January 31, 2022.

FOR FURTHER INFORMATION CONTACT: For further information regarding HPAI in Gabon and Moldova, contact Dr. C. Aaron Monroy, Regionalization Evaluation Services, Strategy and Policy, VS, 920 Main Campus Drive, Venture II, Raleigh, NC 27606; phone: (919) 855–7207; email: *AskRegionalization@usda.gov.* For further information regarding HPAI in Guinea, contact Dr. Ingrid Kotowski, Regionalization Evaluation Services, Strategy and Policy, VS, 920 Main Campus Drive, Venture II, Raleigh, NC 27606; phone: (919) 855–7732; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including Newcastle disease and highly pathogenic avian influenza (HPAI). The regulations prohibit or restrict the importation of live poultry, poultry meat, and other poultry products from regions where these diseases are considered to exist.

Section 94.6 of the regulations contains requirements governing the importation into the United States of carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions of the world where HPAI exists or is reasonably believed to exist. HPAI is an extremely infectious and potentially fatal form of avian influenza in birds and poultry that, once established, can spread rapidly from flock to flock. The Animal and Plant Health Inspection Service (APHIS) maintains a list of restricted regions it considers to be affected with HPAI of any subtype on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.*

APHIS receives notice of HPAI outbreaks from veterinary officials of the exporting country, from the World Organization for Animal Health (WOAH) or from other sources the Administrator determines to be reliable.

On May 19, 2022, the veterinary authorities of Gabon reported to WOAH an HPAI occurrence in that country. On May 23, 2022, after confirming that the HPAI occurred in commercial birds or poultry, APHIS added Gabon to the list of regions where HPAI exists. On that same day, APHIS issued an import alert notifying stakeholders that APHIS imposed restrictions on the importation of poultry, commercial birds, other types of birds (research, performing), ratites, any avian hatching eggs, unprocessed avian products and byproducts, and certain fresh poultry products from Gabon to mitigate risk of HPAI introduction into the United States.

On June 3, 2022, the veterinary authorities of Guinea reported to WOAH an HPAI occurrence in that country. On June 8, 2022, after confirming that the HPAI occurred in commercial birds or poultry, APHIS added Guinea to the list of regions where HPAI exists. On that same day, APHIS issued an import alert notifying stakeholders that APHIS imposed restrictions on the importation of poultry, commercial birds, other types of birds (research, performing), ratites, any avian hatching eggs, unprocessed avian products and byproducts, and certain fresh poultry products originating from or transiting Guinea to mitigate risk of HPAI introduction into the United States.

On January 24, 2022, the veterinary authorities of Moldova reported to WOAH an HPAI occurrence in that country. On January 31, 2022, APHIS provisionally added Moldova to the list of regions where HPAI exists, pending a request for information. On that same day, APHIS issued an import alert notifying stakeholders that APHIS imposed restrictions on the importation of poultry, commercial birds, other types of birds (research, performing), ratites, any avian hatching eggs, unprocessed avian products and byproducts, and certain fresh poultry products originating from or transiting Moldova to mitigate risk of HPAI introduction into the United States. On February 25, 2022, after receiving insufficient information from Moldova, APHIS determined that removal of Moldova from the list of regions where HPAI exists would require a formal re-evaluation pursuant to § 92.4.

With the publication of this notice, we are informing the public that we added: Gabon to the list of regions APHIS considers to be affected with HPAI of any subtype, effective May 23, 2022; Guinea to the list of regions APHIS considers to be affected with HPAI of any subtype, effective June 8, 2022; and Moldova to the list of regions APHIS considers to be affected with HPAI of any subtype, effective January 31, 2022. This notice serves as an official record and public notification of these actions.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 25th day of May 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–11575 Filed 5–31–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0026]

Availability of FSIS Guideline for Controlling Salmonella in Swine Slaughter and Pork Processing Establishments

AGENCY: Food Safety and Inspection Service (FSIS), Department of Agriculture (USDA).

ACTION: Notice of availability and response to comments.

SUMMARY: FSIS is announcing that it has updated its guideline for pork producers on controlling *Salmonella* in swine from pre-harvest through slaughter. The guideline covers pre-harvest controls, including farm rearing, multi-hurdle interventions, transport, and lairage. It contains slaughter control recommendations. It also covers pork fabrication controls, including processing, packaging, and distribution controls for pork cuts and comminuted pork products. Additionally, FSIS is responding to comments on the guideline.

ADDRESSES: A downloadable version of the guideline is available to view and print at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/guidelines.* No hard copies of the guideline have been published.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2014, FSIS announced in the **Federal Register** the availability of the *Compliance Guideline for Controlling Salmonella in Market Hogs* (79 FR 633).[1] The guideline provided information on best practices that may be applied at a hog slaughter facility to prevent, eliminate, or reduce levels of *Salmonella* on hogs at all stages of slaughter and dressing. The guideline was designed to help hog slaughter establishments comply with the relevant regulatory requirements. When FSIS announced the availability of the guidance, the Agency also requested comments on the guidance.

After review and consideration of all comments received, FSIS has made changes to and clarified certain aspects of the guideline. The revisions are summarized below and are discussed in more detail in FSIS' responses to comments. The revised guideline is available at the FSIS guidance web page at *https://www.fsis.usda.gov/policy/fsis-guidelines.* Although comments on this guideline will no longer be accepted through *www.regulations.gov,* FSIS will continue to update this document, as necessary.

Summary of Major Changes to the Guideline

- FSIS changed the document title to *FSIS Guideline to Control Salmonella in Swine Slaughter and Pork Processing Establishments;*
- FSIS removed the word ''compliance'' from the document title and throughout the guideline to clarify that it does not create new regulatory requirements;
- FSIS updated the document to add relevant, current, peer-reviewed scientific references related to swine slaughter, processing of pork cuts, and comminuted pork products;
- FSIS updated the pre-harvest interventions to include vaccine and bacteriophage interventions, housing and biosecurity, and water and feed management;
- FSIS included a pork products outbreak history;
- FSIS added a policy background section;
- FSIS included FSIS data collection and FSIS pork sampling information;
- FSIS added information regarding hot shipping best practices;
- FSIS added a lymph node removal best practices section; and
- FSIS removed language related to the *Trichina* guidance, new technologies guidance, and validation guidance information, because FSIS has separate guidance for these topics.

Comments and Responses

FSIS received six comments on the guidance, one from a pork producer, one from an individual, and four from trade associations representing the pork industry. The comment summary and FSIS' responses follow.

General

Comment: Three trade associations stated that the guideline could be misinterpreted as regulatory requirements. One of the trade associations recommended that, in the final version of the guideline, FSIS should clearly state that the best practices set forth are not regulatory requirements. Additionally, two of the trade associations suggested that FSIS state in the updated guideline that not all establishments may be able to implement all best practices, and that each establishment must develop and implement their own best practices specific to their facility and operation.

Response: FSIS added language to note that the information in this guideline is provided to help swine slaughter establishments meet regulatory requirements. FSIS also stated in the guideline that the best practices recommended do not have the force and effect of law and are not meant to bind the public in any way. The best practice recommendations are based on the best scientific and practical considerations and are derived from scientific literature. This document is intended only to clarify existing regulatory requirements. Establishments should select best practice recommendations that work for their unique in-plant conditions, equipment, and processes. Establishments may choose to adopt different procedures than those outlined in the guideline, but they would need to support that those procedures are effective in meeting validation requirements and to support decisions in the hazard analysis (9 CFR 417.4(a)(1) and 9 CFR 417.5(a)(1)).

Comment: A trade association stated that it would be difficult for many small and very small establishments to implement many of the best practices outlined in the guideline because they may lack technical resources. The commenter suggested that FSIS ensure that the best practices described in the guideline can be economically and consistently implemented by small establishments.

Response: FSIS updated the guideline to clarify that it is focused on small and very small establishments in support of the Small Business Administration's initiative to provide small businesses with compliance assistance under the Small Business Regulatory Enforcement Fairness Act. The guideline includes science-based best practice recommendations and scientific citations based on what small and very small establishments may have the resources and technical ability to apply in the facility. Although all establishments can benefit from the information in the guideline, the focus is on the needs of small and very small establishments to provide assistance that may be otherwise unavailable.

Comment: A trade association stated that FSIS Enforcement, Investigations and Analysis Officers (EIAOs) may not interpret or implement the guidance in a consistent manner. The commenter recommended that FSIS consider developing a training program to address the interpretation and

[1] See: *https://www.govinfo.gov/content/pkg/FR-2014-01-06/pdf/2013-31488.pdf.*

enforcement consistency by EIAOs for guidance documents.

Response: FSIS enforces compliance with statutory and regulatory requirements; FSIS does not enforce compliance with guidance documents because they do not have the force and effect of law. However, FSIS requires EIAOs to review and be familiar with FSIS guidance to provide outreach to establishments.

Comment: Three trade associations recommended removing any references to *Toxoplasma gondii* and *Trichinella spiralis* in the guideline. One trade association further recommended removing any references to *Campylobacter* from the guideline. The commenters argued that these pathogens do not fit into a guidance document for controlling *Salmonella* in market hogs.

Response: FSIS removed all references to *Toxoplasma gondii* and *Trichinella spiralis* in the guideline because FSIS has a separate guidance document that addresses these pathogens. The purpose of this guidance document is to assist pork producers on controlling *Salmonella* in swine; therefore, FSIS also removed all references to *Campylobacter.*

Comment: A trade association stated that FSIS should provide a clearly defined and measurable objective that works towards the goal of preventing, eliminating, or reducing levels of *Salmonella* on hogs. The trade organization also argued that the table with non-pathogenic indicator organism values, should not be included in the guideline. The commenter suggested that the guidance on appropriate action levels for non-pathogenic microorganisms should be removed because it did not directly relate to the control of *Salmonella* or any other pathogen.

Response: FSIS has updated the guidance to include the recent *Salmonella* illness outbreaks related to pork products consumption (Table 1), and public health relevance is focused on how pork may be a vehicle for salmonellosis. In addition, the table with indicator organism criteria limits in market hogs has been removed from the guideline. All pork slaughter establishments are required to comply with the requirements of 9 CFR 310.18 for evaluation of statistical process control to minimize microbial contamination of carcasses, reduce microbial pathogens that may be present and injurious to health, control the proliferation of any remaining microorganisms, and prevent recontamination.

Comment: A trade association stated that if the guideline contains best practices related to temperatures, those temperatures should be directly related to the control of *Salmonella.*

Response: FSIS updated the temperature recommendations to include the latest peer-reviewed research. Several temperature recommendations were removed because some small and very small establishments may not be able to implement resource-intensive equipment and procedures to maintain these temperatures.

Comment: A pork producer asked FSIS to add recommendations to the guideline on how to best control *Salmonella* in establishments that do not utilize polishing equipment and that skin out hogs manually or with a hide puller.

Response: FSIS provided best practice recommendations for commonly used steps in the slaughter process. Some establishments processes may vary. The guideline includes a recommendation that knives be sanitized frequently for establishments that use skinning to remove the hair and hide. Additionally, the recommendations for sanitation and using a multi-hurdle approach may be applicable to all establishments, including those that do not utilize polishing equipment.

Comment: A pork producer asked FSIS to add recommendations to the guideline on how to best control *Salmonella* in establishments that split the body with the head still attached.

Response: FSIS best practice recommendations for head washing and head dropping are important for all establishments, including those that split the carcass with the head still attached. FSIS updated the guideline to recommend that establishments flush the oral cavity with room-temperature water removing ingesta or other contaminants before head dropping and FSIS head inspection; maintain and sanitize head dropping equipment, as necessary, between carcasses; sanitize knives frequently and properly; and maintain and sanitize knives and equipment whenever the oral-pharyngeal cavity is sectioned or there is exposure to stomach contents.

References and Formatting

Comment: A pork producer noted that the previous version of the guideline contained broken hyperlinks or hyperlinks that do not go to the correct location.

Response: FSIS has updated all hyperlinks and references.

Comment: The individual commenter asked if the information for ''McMullen, 2000'' referenced on pages 16 and 24 of the previous version of the guideline should be added to the References section.

Response: FSIS has updated the References section to include the correct citation information. This reference is also cited in the section titled ''Pre-chill Final Rinse, Hot Rinse, and Steam Pasteurization.''

Comment: Two trade associations suggested that FSIS update the scientific references to the most recent research from the United States. The commenters argued that most of the references are outdated and many of the studies referenced in the guideline were conducted in other countries and are not applicable in the United States. Another trade association requested that the guideline contain a reference or citation after each recommended best practice.

Response: FSIS has updated all the references, removed outdated references, and included nearly 100 new peer-reviewed references to assist small and very small establishments in accessing the latest research and scientific support. The references are listed at the end of the document and are also cited in each pertinent section throughout the guideline for ease-of-use for small and very small establishments.

Salmonella in Market Hogs

Comment: A trade association asked if there is a link between the FSIS market hog *Salmonella* baseline and public health risk.

Response: FSIS has updated the guideline to include the latest FSIS sampling data from the Raw Pork Products Exploratory Sampling Program.[2] These updates provide a recent, thorough analysis of *Salmonella* prevalence in market hogs and the public health risk.

Comment: A trade association asked what type of pork caused the outbreaks discussed in the guideline and if the pork was produced under FSIS inspection.

Response: FSIS has updated the guidance to include the recent illness outbreaks related to pork products consumption. Table 1 lists each pork product implicated in each of the 36 illness outbreaks from 2014–2019. Retail product associated with outbreaks is typically inspected by FSIS or by State inspection programs. However, there have also been outbreaks from whole roaster hogs at church events, etc., that were from non-FSIS inspected sources.

[2] See: *https://www.fsis.usda.gov/science-data/sampling-program/raw-pork-products-exploratory-sampling-program#:~:text=FSIS%20announced%20the%20launch%20of,organisms%20in%20various%20pork%20products.*

Farm Rearing

Comment: Two trade associations recommended adding additional best practices to the farm rearing section of the guideline on the use of vaccination in herds and on the use of non-pelleted feed.

Response: FSIS updated the section on farm rearing to include housing and biosecurity measures. In addition, FSIS included sections on preharvest controls for water and feed management and pre-harvest vaccine and bacteriophage interventions.

Comment: A trade association representing the pork industry argued that the best practice recommendations for farm rearing and transport should not be included in the guideline. The commenter argued that in most cases, establishments have little, if any, influence on such practices and that FSIS does not have jurisdiction to regulate on-farm practices.

Response: FSIS recommends establishments work closely and establish communication with their livestock suppliers to identify and address on-farm controls as a means of targeting multiple areas of swine production through pre-harvest control of *Salmonella* coming into slaughter establishments. FSIS updated the section on live animal transport and lairage with best practice recommendations based on current scientific research because microbiological contamination in the slaughterhouse environment can start with the delivery of *Salmonella*-positive hogs. Control of *Salmonella* at the herd level is critical to prevent the spread on-farm, through hygienic processes, feed and water management, live animal transport, and lairage before hogs reach the slaughter line. Stress during transport and many on-farm factors play a significant role in spreading *Salmonella.*

Lairage

Comment: Four trade associations commented that the best practice to disinfect lairage pens and alley ways between herds (using chlorinated alkaline detergent followed by disinfection with a quaternary ammonium solution) is overly burdensome and may not be practical for every establishment. One of these trade associations stated that there is literature to support that there are other cleaners and sanitizers that would be equally effective. Another trade group commented during ongoing production operations, constant application of cleaning solutions is not practical, cost effective, or often even possible due to the logistics of creating space for incoming loads and moving hogs on to harvest in a continuous line. The commenter suggested that implementing such a recommendation in many establishments could lead to crowding or unnecessary agitation of the hogs. The commenter stated that it is more practical for establishments to clean and sanitize the pens and alleyways when the building and structures are empty or close to empty.

Response: FSIS updated the guideline to recognize that there are numerous cleaners and sanitizers with varying application parameters and frequencies that establishments may choose to use and to recognize that those decisions should be based on the unique characteristics of an establishment's food safety plan and available support. FSIS also included in the guidance that it is often practical to clean and sanitize pens and alleyways when they are empty.

Comment: A trade association noted that the guideline recommends ensuring that hogs are washed clean (pen shower) and dry enough to preclude dripping at the time of stunning. The commenter and two other trade associations noted that this practice may not be practical for many establishments, because showering pigs in colder weather may raise animal welfare issues in addition to the possibility of ice formation.

Response: In the guidance, FSIS recommends that the hogs should be dry enough to prevent dripping at the time of stunning; if they are dripping, the moisture may contribute to cross-contamination during stunning, sticking, or skinning, for those establishments that skin the carcasses instead of using a dehairing machine. FSIS updated the guidance to state that pen showers are also important measures to ensure that hogs are washed clean, when appropriate. FSIS recommends establishments consider weather conditions to determine whether it is appropriate to use pen showers. Consistent with the commenters, in the guidance, FSIS recognizes cold conditions and ice formation may create an animal welfare concern.

Comment: Three trade associations asserted that the best practice recommendation for minimizing the time hogs are held in lairage had two key problems. The first is that the guideline does not specify a recommended ''minimum'' time that pigs should be held in lairage. Secondly, if pigs are not held in lairage at all, that would compromise pork quality, may result in high incidence of pale soft exudative conditions, and increases *Salmonella* contamination.

Response: In the guidance, FSIS does not give a minimum time for holding hogs in lairage. Rather, FSIS recommends that establishments use a variety of preventive measures at lairage to prevent and reduce the spread of *Salmonella* among the herd, including minimizing the time that hogs are held in lairage and preventing overcrowding during time in lairage. Also in the guidance, FSIS encourages further study and solutions by industry in controlling and reducing the spread of *Salmonella* in hog slaughter facilities with particular attention to controls at lairage.

Comment: A trade association recommended the best practice to use slatted or elevated floors in lairage pens to reduce waste and water accumulation. The commenter stated that, while this may be useful to those considering new construction or retrofitting, it would be cost-prohibitive for most existing facilities. The commenter further stated that many existing operations achieve acceptable results using sloped floors with proper drainage and effective cleaning and sanitizing.

Response: The guidance recommends that establishments maintain lairage pens in good condition to prevent injury to animals, and that slatted, sloped, or elevated floors are important to reduce waste and water accumulation that can contribute to the spread of *Salmonella.* FSIS best practice recommendations do not require establishments to retrofit an existing facility.

Comment: A trade association representing the pork industry noted the guideline contains a ''highlight box'' indicating that lairage is the most cost-effective stage to prevent cross-contamination. The commenter stated that while lairage is currently a vulnerability for pigs to become infected, the commenter was not aware of specific scientific evidence to be able to document that it is the most cost-effective stage to prevent cross-contamination. The commenter stated that an establishment's hazard analysis should be used to make the determination of locations and cost-effectiveness.

Response: FSIS does state in the text of the guideline that a scientific study has shown that controls at lairage are cost-effective measures an establishment can take to prevent cross-contamination that leads to rapid infection (Van der Gaag *et al.,* 2004). The statement has been removed from the highlight box. As stated in the guideline, establishments should select best

practice recommendations that work for the unique in-plant conditions, equipment, and processes.

Slaughter/Bleeding

Comment: A trade association recommended that FSIS rename the ''Slaughter/Bleeding'' step and section heading to ''Bleeding.''

Response: FSIS has renamed the section heading to *Bleeding.*

Comment: Two trade associations argued that although stick knives have tested positive for *Salmonella* in several studies, there is very little data to suggest that they are a ''significant source'' for *Salmonella* contamination.

Response: FSIS recommends that knives be sanitized between each carcass. Contamination of knives, boots, the number of gut ruptures, mechanical problems, or other factors, which are common process points for handling and cross-contamination, were factors significantly associated with the prevalence of *Salmonella* on the carcasses in research studies (Botteldoorn *et al.,* 2003; Letellier *et al.,* 2009).

Scalding

Comment: Two of the industry groups noted that the statement references 5 °F (41 °C) should read 105 °F (41 °C).

Response: FSIS has corrected typographical errors and temperatures, and the section has been updated with additional peer-reviewed references.

Comment: A trade association stated that many establishments use scalding temperatures and times other than those referenced in the guideline, and this should be reflected in the guidance document.

Response: The *Scalding* section has been updated with additional peer-reviewed references, including other temperature/time combinations that have been shown to be effective in various studies.

Comment: A trade association recommended that FSIS update the guideline to state that establishments should consider the type of hog, season, and equipment when determining the appropriate scalding temperature and duration.

Response: FSIS updated the guidance to state that FSIS recommends considering the type of hog, season, and the equipment being used to determine and support the appropriate scalding temperature and duration.

De-Hairing

Comment: Two trade associations stated that the suggested best practice of cleaning and disinfecting de-hairing equipment, preferably using a clean-in place (CIP) system, which may be applied on an ongoing basis throughout production, is not practical for this type of equipment. The industry groups argued that not all de-hairing equipment can be retrofitted with CIP systems, and many small establishments use self-contained scalders which simultaneously de-hair the carcass.

Response: FSIS updated the guideline to reflect that some establishments may find using a CIP system throughout production beneficial since it can be applied on an ongoing basis; however, FSIS recognizes in the guideline that such a system requires significant investment and appropriate equipment. As stated in the guideline, establishments should select best practice recommendations that work for the unique in-plant conditions, equipment, and processes.

Comment: Two trade associations stated that the suggested best practice for removing all organic material and debris from de-hairing equipment at the end of the day is overly burdensome. The commenters stated that there are many effective ways to clean and disinfect de-hairing equipment and that specifying water pressures, types of chemicals, and contact times does not allow for flexibility.

Response: FSIS removed several specific temperature and antimicrobial intervention recommendations because some small and very small establishments may not be able to implement the use of resource-intensive equipment and procedures. As stated in the guideline, FSIS recommends that intervention and control strategies be formulated based on a combination of measures that are both practical and economically feasible.

Comment: Two trade associations argued that the suggested best practice to ''use water between 140° to 144 °F (60 °C to 62 °C) in the de-hairing machine if the water is not chemically treated (7 ICMSF, 1998)'' may not be practical depending on the type of equipment used.

Response: FSIS included several best practice recommendations in the updated guideline, depending on the equipment type used. FSIS also recommended that establishments ensure that equipment can be cleaned and disinfected to comply with 9 CFR 416.3. As stated in the guideline, establishments should select best practice recommendations that work for the unique in-plant conditions, equipment, and processes. FSIS recommends that intervention and control strategies be formulated based on a combination of measures that are both practical and economically feasible.

Comment: A pork producer asked FSIS to add recommendations to the guideline on how to best control *Salmonella* in very small establishments that do not utilize de-hairing tanks.

Response: FSIS provided best practice recommendations for commonly used steps in the slaughter process. FSIS did not update the guideline to include a separate section for establishments that do not use de-hairing tanks, but does address skinning hogs in the guidance. FSIS added a recommendation that knives be sanitized frequently for establishments that use skinning to remove the hair and hide. Additionally, the recommendations for sanitation and using a multi-hurdle approach may be applicable to all establishments, including those that do not utilize de-hairing tanks.

Steam/Hot Water Vacuuming

Comment: Two trade associations stated that the Steam/Hot Water Vacuuming section was out of place in the document and blends information on steam vacuuming and carcass washing into a single section. The industry groups argued that it is unlikely that these interventions would be applied between the gambrelling and singeing processes.

Response: FSIS has reorganized the guidance to be reflective of the steps of the process and added new sections (*e.g.,* multi-hurdle intervention approach, pre-harvest sections, lymph node removal, shipping practices) to provide thorough best practice recommendations. In addition, FSIS has separated steam and hot water vacuum interventions from carcass rinses and washes to reflect the typical order of interventions in-plant.

Singeing Best Practices

Comment: A pork producer asked what best practices FSIS would recommend for small establishments to control *Salmonella* that do not utilize singeing cabinets.

Response: FSIS provided best practice recommendations for commonly used steps in the slaughter process. Some establishments processes may vary, and some establishments may use skinning rather than scalding, dehairing, and singeing. FSIS recommends that intervention and control strategies be formulated based on a combination of measures that are both practical and economically feasible.

Pre-Evisceration Carcass Rinse or Spray

Comment: Two trade associations noted the suggested best practice to use water at a temperature greater than 160 °F (71.1 °C) and stated that there is support for using lower temperatures.

Response: FSIS removed specific temperatures from this section of the guideline.

Comment: A trade association representing the pork industry commented on the best practice that recommends that the pressure for carcass sprays not exceed 100 PSI to prevent driving contamination into the tissue. The commenter questioned what tissue the contamination would potentially be driven into.

Response: FSIS has removed all reference to 100 PSI pressure spray from the guidance document. The guidance includes FSIS recommended best practices when using pre-evisceration carcass rinses and sprays. FSIS does recommend that monitoring pressure is important to prevent driving microbiological contamination into the carcass tissue.

Comment: A trade association asked how the suggested best practice to minimize overspray of water or solution from the cabinet is associated with food safety.

Response: FSIS has updated the guidance to reflect that establishments should minimize splash onto other carcasses to prevent potential cross-contamination. Airborne bacterial contamination has been shown to spread; therefore, FSIS recommends establishments take precautions to limit overspray and aerosolization through techniques and equipment.

Comment: Two trade associations asked if the best practice recommendation of using a post-evisceration rinse or spray to further reduce carcass contamination is another practice prior to a final carcass wash. The industry groups further asked if application of a final carcass wash is a regulatory requirement.

Response: While a final carcass wash is not a regulatory requirement for swine slaughter establishments, FSIS recommends carcass decontamination treatments before chilling and that intervention and control strategies be formulated based on a combination of measures that are both practical and economically feasible. Studies have shown that processing procedures, such as decontamination treatments after evisceration and carcass splitting, generally result in decreased prevalence of *Salmonella* as the carcasses move toward the cooler.

Comment: A trade association recommended FSIS clarify recommendations concerning applying organic acids.

Response: FSIS has updated the guideline to state that automated spray cabinets or handheld sprayers may be used, bearing in mind that the effectiveness of the interventions vary based on the critical operational parameters used, and appropriate scientific support is required for establishments using interventions.

Bung Isolation

Comment: Two trade associations requested FSIS clarify the guidance concerning bung isolation.

Response: FSIS updated the guideline to state that FSIS recommends establishments bag and tie the bung before evisceration, ensuring staff pay specific attention to minimizing cross-contamination of the carcass and viscera. FSIS recommends that intervention and control strategies be formulated based on a combination of measures that are both practical and economically feasible.

Pre-Chill Final Rinse/Hot Rinse/Steam Pasteurization

Comment: Two trade associations recommended that FSIS provide guidance for the upper limits on water pressure for washing carcasses.

Response: FSIS removed specific requirements for pressure in the guidance because the efficacy of these interventions can vary depending on the specific critical operational parameters used, including water temperature, water pressure, length of application, and chemical concentration. FSIS best practice recommendations state that establishments should implement decontamination and antimicrobial interventions using appropriate critical operational parameters.

Comment: A trade association stated that there are many other antimicrobial rinses that can be applied, and that limiting the recommendation to lactic or acetic acid may imply that it is the only antimicrobial that can be used.

Response: FSIS updated the guideline to include a variety of antimicrobial interventions supported by the literature.

Comment: A trade association representing the pork industry suggested that FSIS mention antimicrobials in this section. The commenter noted that FSIS could provide references that include specific examples as a useful tool to assist the small and very small establishments.

Response: FSIS updated the guideline to provide best practice recommendations, which include a variety of antimicrobial interventions supported by the literature. FSIS provided information and citations to potential antimicrobial interventions, including chlorine, trisodium phosphate, lactic acid, and acetic acid.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.* FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print,

audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

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

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2023–11677 Filed 5–31–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–35–2023]

Foreign-Trade Zone (FTZ) 207, Notification of Proposed Production Activity; LEGO Manufacturing Richmond, Inc.; (LEGO® Bricks and Toy Sets); Chester and Colonial Heights, Virginia

The LEGO Group submitted a notification of proposed production activity to the FTZ Board (the Board) for the LEGO Manufacturing Richmond, Inc. facilities in Chester and Colonial Heights, Virginia, within FTZ 207. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on May 24, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include LEGO® construction toy sets, and plastic, molded, interlocking bricks and various shapes and figurines (duty rate is duty-free).

The proposed foreign-status materials and components include: color additives in the form of plastic granulates (synthetic organic; preparations based on titanium dioxide; ultramarine; inorganic mixtures or combinations); decoration inks; ink diluents; plastic resins; self-adhesive plastic rolls; auto-adhesive stickers and paper stickers; plastic components (foil in rolls; boxes; trays; toy containers; storage bags); polyester storage bags; tissue wrapping paper; paper coated with plastic in rolls; cardboard cartons (non-corrugated; corrugated); rigid paperboard boxes; paper pulp trays; printed labels; molded paper pulp containers; advertising materials; toy set building instructions; nylon components (yarn; string; twine); metal contact plates for battery-powered toy sets; power adapters; batteries (lithium; rechargeable); sound cards; power switches; control hubs for power, sensors, and motors; micro controllers; USB cables with sleeves; sensors (motion; spatial); and, plastic, molded, interlocking bricks and various shapes and figurines (duty rate ranges from duty-free to 17.6%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 11, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: May 25, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–11618 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable June 1, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping duty and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–904	731–TA–1103 ...	China	Activated Carbon (3rd Review)	Mary Kolberg, (202) 482–1785.
A–423–813	731–TA–1374 ...	Belgium ..	Citric Acid and Certain Citrate Salts (1st Review).	Mary Kolberg, (202) 482–1785.
A–301–803	731–TA–1375 ...	Columbia	Citric Acid and Certain Citrate Salts (1st Review).	Mary Kolberg, (202) 482–1785.
A–549–833	731–TA–1376 ...	Thailand	Citric Acid and Certain Citrate Salts (1st Review).	Mary Kolberg, (202) 482–1785.
A–570–866	731–TA–921	China	Folding Gift Boxes (4th Review)	Mary Kolberg, (202) 482–1785.
A–588–854	731–TA–860	Japan	Tin Mill Products (4th Review)	Jacky Arrowsmith, (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that all parties wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping duty and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 26, 2023.

Scot Fullerton,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–11680 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for July 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in July 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Cast Iron Soil Pipe from China, A–570–062 (1st Review)	Mary Kolberg, (202) 482–1785.
Drawn Stainless Steel Sinks from China, A–570–983 (2nd Review)	Mary Kolberg, (202) 482–1785.
Low Melt Polyester Staple Fiber from South Korea, A–580–895 (1st Review)	Mary Kolberg, (202) 482–1785.
Low Melt Polyester Staple Fiber from Taiwan, A–583–861 (1st Review)	Mary Kolberg, (202) 482–1785.
Ripe Olives from Spain, A–469–817 (1st Review)	Mary Kolberg, (202) 482–1785.
Countervailing Duty Proceedings	
Cast Iron Soil Pipe from China, C–570–063 (1st Review)	Mary Kolberg, (202) 482–1785.
Drawn Stainless Steel Sinks from China, C–570–984 (2nd Review)	Mary Kolberg, (202) 482–1785.
Ripe Olives from Spain, C–469–818 (1st Review)	Mary Kolberg, (202) 482–1785.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in July 2023.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 10, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–11670 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

Rice University, et al., Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On May 4, 2023, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See Application(s) for Duty-Free Entry of Scientific Instruments, 88FR28489–91, May 4, 2023* (*Notice*). We received no public comments.

Docket Number: 23–005. Applicant: Rice University, 6100 Main Street, Houston, TX 77005. Instrument: Full-ring Shaped Ultrasonic Transducer Array. Manufacturer: HEBEI ULSO TECH CO., LTD., China. Intended Use: The instrument willbe used in the research of photoacoustic tomography, which will be used for photoacoustic signal full-view detection. The instrument will be integrated into a customized photoacoustic imaging system for visualization of whole body dynamics inside small animals for biomedical applications. For example, the developed imaging system can be used to study tumor metastasis, monitor chemotherapy, and test new drugs. The overall goal of this research is to develop a pre-clinical molecular imaging platform for cancer study. The instrument will be used for multiple imaging related undergraduate/graduate level courses in electrical engineering at Rice University, including computation imaging, computer vision, optical imaging, medical imaging, etc. The instrument will be integrated into a customized medical imaging system consisting of optics, ultrasonic sensing, data acquisition and image reconstruction. Each component will be discussed in related courses. Students will also tour the research lab and operate the imaging system to gain hands-on experience.

Docket Number: 23–006. Applicant: University of Wisconsin Stout, 712 Broadway Street S, Menomonie, WI 54751. Instrument: 156 Direction Photographic Lighting Cage. Manufacturer: ESPER Designs, Ltd., United Kingdom. Intended Use: To enable/improve the capture of objects with difficult appearance properties. To increase accessibility to data and software supporting photogrammetry and inverse rending research at other institutions. To empower the digital preservation and exhibition of three-dimensional cultural heritage artifacts for galleries, libraries, archives, and museums.

The grant was awarded to the University of Wisconsin Stout, a primarily undergraduate, public university. The equipment will be housed in the university Fabrication Lab which is accessible to all students on campus. It will also be used to support curriculum in courses for the Game Design and Development (GDD) Program, the Professional Communication and Emerging Media (PCEM) Program, and other design programs.

Docket Number: 23–007. Applicant: The Board of Trustees of the Colorado School of Mines for and on Behalf of the Colorado School of Mines, 1500 Illinois Street, Golden, CO 80401. Instrument: Oxide Molecular Beam Epitaxy System. Manufacturer: Scienta Omicron, Germany. Intended Use: Oxide thin films will be grown for materials discovery and materials science

research. The identity of the materials or phenomena to be studied: Oxide and metal thin film materials that are insulating, semiconducting, or metals (*i.e.,* YMnO3, IrO2). The properties of the materials or phenomena to be investigated: Primarily study of their functional properties (such as ferroelectric, piezoelectric, and/or ferromagnetic) or for growth of surfaces relevant to energy conversion and storage applications (electrolysis, fuel cells, ion transport). The experiments to be conducted: Thin film growth using in situ reflection high energy electron diffraction (RHEED) surface monitoring and studies. The objectives pursued during the investigations are the development of novel materials for functional and energy applications, fundamental science surface and materials properties studies. The techniques used in employing the instrument to achieve the objectives: Oxide molecular beam epitaxy growth, RHEED.

Docket Number: 23–008. Applicant: Arizona State University, 1711 S Rural Road, Tempe, AZ 85281. Instrument: Cheetah 1 X-by-wire Automated Vehicle Chassis. Manufacturer: Shanghai Liaison Tech Co., Ltd., China. Intended Use: The Cheetah Chassis (model cars) will be used to develop a small testbed, and add IMU sensors, GPS, mmWave radar, communication modules, and motor controllers on each of the Cheeta Chassis. Experiments will be run on model cars to test the sensing and connectivity between vehicles, with the objectives being to test functionalities including, V2V and V2I communications, sensing and vehicle automation control algorithms. First, simulation studies will run in the lab, and then implement the modules on the testbed and run experiments in parking lots to achieve the objectives.

Docket Number: 23–009. Applicant: University of Chicago, 5640 S Elis Avenue, ERC LL248, Chicago, IL 60637. Instrument: Fiber Laser and Fiber Amplifier. Manufacturer: Precilasers, China. Intended Use: Experimentally demonstrate entanglement generation between our atoms by creating Bell Pairs (a state of two maximally entangled atoms) and measuring parity oscillations when we drive them with a laser. Next, we will use our ability to generate entanglement to create and measure more exotic entangled states, such as ''cluster states,'' which promise to be useful for measurement-based quantum computation. There will be other quantum phenomena we will investigate along the way, such as using our entangled states for electric field measurements, but eventually we will experimentally develop single-atom laser control, which will allow us to perform almost arbitrary programmable quantum computation.

Docket Number: 23–010. Applicant: Arizona State University, 1711 S Rural Road, Tempe, AZ 85281. Instrument: Cheetah 1 X-by-wire Automated Vehicle Chassis. Manufacturer: Shanghai Liaison Tech Co., Ltd., China. Intended Use: The Cheetah Chassis (model cars) will be used to develop a small testbed, and add IMU sensors, GPS, mmWave radar, communication modules, and motor controllers on each of the Cheeta Chassis. Experiments will be run on model cars to test the sensing and connectivity between vehicles, with the objectives being to test functionalities including V2V and V2I communications, sensing and vehicle automation control algorithms. First, simulation studies will run in the lab, and then implement the modules on the testbed and run experiments in parking lots to achieve the objectives.

Docket Number: 23–011. Applicant: Arizona State University, 1711 S Rural Road, Tempe, AZ 85281. Instrument: Cheetah 1 X-by-wire Automated Vehicle Chassis. Manufacturer: Shanghai Liaison Tech Co., Ltd., China. Intended Use: The Cheetah Chassis (model cars) will be used to develop a small testbed, and add IMU sensors, GPS, mmWave radar, communication modules, and motor controllers on each of the Cheeta Chassis. Experiments will be run on model cars to test the sensing and connectivity between vehicles, with the objectives being to test functionalities including V2V and V2I communications, sensing, and vehicle automation control algorithms. First, simulation studies will run in the lab, and then implement the modules on the testbed and run experiments in parking lots to achieve the objectives.

Docket Number: 23–012. Applicant: Drexel University, 3141 Chestnut Street, Philadelphia, PA 19104. Instrument: Roll-to-Roll Coater. Manufacturer: InfinityPV ApS, Denmark. Intended Use: The instrument will be used to study the processing of halide perovskite thin films for application in solar cells. Perovskites have ideal optical and electronic properties for solar energy conversion, but work remains to understand how to obtain these desirable properties while processing in a high-speed roll-to-roll manner. Vary coating, drying, and annealing conditions to understand how processing affects material properties. The objective is to uncover conditions that lead to photovoltaic-grade perovskite films at web speeds larger than 1 m/min. The instrument must fit in a fume hood and within the project budget. This research is supported by the National Science Foundation under the award CMMI–1933819.

Docket Number: 23–013. Applicant: New Mexico Institute of Mining and Technology Magadalena Ridge Observatory Interferometer (MROI), 801 Leroy Place, Socorro, NM 87801. Instrument: Unit Telescope. Manufacturer: Advanced Mechanical and Optical Systems (AMOS), Belgium. Intended Use: To better understand the universe and the processes that take place within it by observation of objects whose structure, origins and fate are not properly understood at present. These research areas are fundamental to expanding the knowledge of particle physics, as well as understanding the origins of the Universe and Earth.

Dated: May 25, 2023.

Gregory W. Campbell,

Director, Subsidies and Economic Analysis, Enforcement and Compliance.

[FR Doc. 2023–11617 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of

calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of June 2023,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings	
ARGENTINA: Raw Honey, A–357–823	11/23/21–5/31/23
BRAZIL: Raw Honey, A–351–857	11/23/21–5/31/23
GERMANY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–428–845	6/1/22–5/31/23
INDIA:	
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–533–873	6/1/22–5/31/23
Glycine, A–533–883	6/1/22–5/31/23
Quartz Surface Products, A–533–889	6/1/22–5/31/23
Raw Honey, A–533–903	11/23/21–5/31/23
INDONESIA: Prestressed Concrete Steel Wire Strand, A–560–837	6/1/22–5/31/23
ITALY:	
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–475–838	6/1/22–5/31/23
Prestressed Concrete Steel Wire Strand, A–475–843	6/1/22–5/31/23
JAPAN:	

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Carbon and Alloy Seamless Standard, Line, and Pressure (over 4½ inches), A–588–850	6/1/22–5/31/23
Carbon and Alloy Seamless Standard, Line, and Pressure (under 4½ inches), A–588–851	6/1/22–5/31/23
Glycine, A–588–878	6/1/22–5/31/23
MALAYSIA: Prestressed Concrete Steel Wire Strand, A–557–819	6/1/22–5/31/23
REPUBLIC OF KOREA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–580–892	6/1/22–5/31/23
SOCIALIST REPUBLIC OF VIETNAM:	
Certain Tool Chests and Cabinets, A–552–821	6/1/22–5/31/23
Laminated Woven Sacks, A–552–823	6/1/22–5/31/23
Raw Honey, A–552–833	11/23/21 –5/31/23
SPAIN:	
Chlorinated Isocyanurates, A–469–814	6/1/22–5/31/23
Finished Carbon Steel Flanges, A–469–815	6/1/22–5/31/23
Prestressed Concrete Steel Wire Strand, A–469–821	6/1/22–5/31/23
SOUTH AFRICA: Prestressed Concrete Steel Wire Strand, A–791–826	6/1/22–5/31/23
SWITZERLAND: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–441–801	6/1/22–5/31/23
TAIWAN: Helical Spring Lock Washers, A–583–820	6/1/22–5/31/23
THE PEOPLE'S REPUBLIC OF CHINA:	
Artist Canvas, A–570–899	6/1/22–5/31/23
Ceramic Tile, A–570–108	6/1/22–5/31/23
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–570–058	6/1/22–5/31/23
Certain Tool Chests and Cabinets, A–570–056	6/1/22–5/31/23
Chlorinated Isocyanurates, A–570–898	6/1/22–5/31/23
Furfuryl Alcohol, A–570–835	6/1/22–5/31/23
High Pressure Steel Cylinders, A–570–977	6/1/22–12/4/22
Polyester Staple Fiber, A–570–905	6/1/22–5/31/23
Prestressed Concrete Steel Wire Strand, A–570–945	6/1/22–5/31/22
Silicon Metal, A–570–806	6/1/22–5/31/23
Tapered Roller Bearings, A–570–601	6/1/22–5/31/23
TUNISIA: Prestressed Concrete Steel Wire Strand, A–723–001	6/1/22–5/31/23
TURKEY: Quartz Surface Products, A–489–837	6/1/22–5/31/23
UKRAINE: Prestressed Concrete Steel Wire Strand, A–823–817	6/1/22–5/31/23
Countervailing Duty Proceedings	
INDIA:	
Glycine, C–533–884	1/1/22–12/31/22
Quartz Surface Products, C–533–890	1/1/22–12/31/22
Laminated Woven Sacks, C–552–824	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA:	
Ceramic Tile, C–570–109	1/1/22–12/31/22
Glycine, C–570–081	1/1/22–12/31/22
Stainless Steel Flanges, C–570–065	1/1/22–12/31/22
High Pressure Steel Cylinders, C–570–978	1/1/22–12/04/22
TURKEY: Quartz Surface Products, C–489–838	1/1/22–12/31/22

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2023. If Commerce does not receive, by the last day of June 2023, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period* 85 FR 41363 (July 10, 2020).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 16, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–11666 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–DS–P

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–126, C–570–127]

Non-Refillable Steel Cylinders From the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders; Water Capacity Between 100 and 299 Cubic Inches

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Worthington Industries (Worthington), the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of non-refillable steel cylinders (non-refillable cylinders), which have a water capacity between 100 and 299 cubic inches, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on non-refillable cylinders from the People's Republic of China (China).

DATES: Applicable June 1, 2023.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, 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) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2023, Worthington filed a circumvention inquiry request alleging that non-refillable cylinders with a water capacity between 100 and 299 cubic inches are circumventing the *Orders* [1] and, accordingly, should be included within the scope of the orders.[2] Worthington alleges that these non-refillable cylinders constitute merchandise altered in form or appearance in such minor respects that they should be included in within the scope of the *Orders,* pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(j). In addition, Worthington alleges that these non-refillable cylinders are later-developed merchandise and should be included within the scope of the *Orders,* pursuant to section 781(d) of the Act and 19 CFR 351.226(k).

Scope of the Orders

The merchandise covered by these orders is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by these orders.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to these orders is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers non-refillable cylinders with a water capacity between 100 and 299 cubic inches that are produced in China and exported to the United States.

Statutory and Regulatory Framework

Section 351.226(d)(1)(ii) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested

[1] *See Certain Non-Refillable Steel Cylinders from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping and Countervailing Duty Orders,* 86 FR 25839 (May 11, 2021) (*Orders*).

[2] *See* Worthington's Letter, ''Request for Circumvention Ruling Pursuant to Sections 781(c) and 781(d) of the Tariff Act of 1930,'' dated April 12, 2023 (Worthington's Request).

party supporting these allegations.'' Worthington alleged circumvention pursuant to section 781(c) of the Act (merchandise altered in form or appearance in minor respects) and section 781(d) of the Act (merchandise developed after an investigation is initiated).

Section 781(c)(1) of the Act provides that the class or kind of merchandise subject to an AD or CVD order shall include articles that have been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that section 781(c)(1) of the Act ''shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.'' Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce may consider criteria including, but not limited to: (1) Overall physical characteristics of the merchandise; (2) expectations of ultimate users; (3) use of the merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.

Section 781(d) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise is developed after an investigation is initiated. In conducting a later-developed merchandise inquiry under section 781(d)(1) of the Act and 19 CFR 351.226(k), Commerce will consider whether: (1) The later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued; (2) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product; (3) the ultimate use of the earlier product and the later-developed merchandise are the same; (4) the later-developed merchandise is sold through the same channels of trade as the earlier product; and (5) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.[3] First, however, Commerce determines whether the merchandise subject to the inquiry was commercially available at the time of the initiation of the underlying LTFV or CVD investigation (*i.e.,* the product was present in the commercial market or the product was tested and ready for commercial production).[4]

For companion AD and CVD proceedings, ''the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.''[5] Further, ''{o}nce the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.''[6] Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

Analysis

After analyzing the record evidence and Worthington's allegation, we determine that there is sufficient information to warrant initiation of a circumvention inquiry based on both allegations: (1) Minor alterations, pursuant to section 781(c) of the Act and 19 CFR 351.226(j); and (2) later-developed merchandise, pursuant to section 781(d) of the Act and 19 CFR 351.226(k). For a full discussion of the basis for our decision to initiate a circumvention inquiry regarding both the later-developed merchandise and minor alterations allegations, *see* the Initiation Checklist.[7]

The information provided by Worthington also warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, when the facts warranted initiation on a country-wide basis.[8]

Commerce intends to establish a schedule for questionnaires and comments on the issues related to this inquiry. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rates that would be applicable if the products were determined to be covered by the scope of the *Orders.* Should Commerce issue a preliminary or final circumvention determination, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(c) and (d) of the Act, Commerce determines that Worthington's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether U.S. imports of non-refillable cylinders with a water capacity between 100 and 299 cubic inches produced in, and exported from, China are circumventing the *Orders.* We included a description of the products that are subject to the circumvention inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry, in the accompanying Initiation Checklist.[9] In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination in this circumvention proceeding no later than 150 days from the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with sections 781(c) and (d) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: May 25, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–11681 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* section 781(d)(1) of the Act.

[4] *See* 19 CFR 351.226(k).

[5] *See* 19 CFR 351.226(m)(2).

[6] *Id.*

[7] *See* Circumvention Initiation Checklist, ''Non-Refillable Steel Cylinders from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Initiation Checklist).

[8] *See, e.g., Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry,* 82 FR 4630 (July 26, 2017), and accompanying Issues and Decision Memorandum at Comment 4.

[9] *See* Initiation Checklist.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD050]

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

ACTION: Notice of fee rate adjustment change.

SUMMARY: NMFS issues this notice to inform the public that there will be a decrease of the fee rate required to repay the reduction loan financing the Southeast Alaska Purse Seine Salmon Fishing Capacity reduction program. Effective June 1, 2023, NMFS is decreasing the Loan B fee rate to one percent of landed value to ensure timely repayment of the loan. The fee rate for Loan A will remain unchanged at one percent of landed value.

DATES: The Southeast Alaska Purse Seine Salmon Fishing Capacity loan program fee rate increase will begin with landings on June 1, 2023. The first due date for fee payments with the increased rate will be July 15, 2023.

ADDRESSES: Send questions about this notice to Michael A. Sturtevant, Program Manager, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant, (301) 427–8782.

SUPPLEMENTARY INFORMATION:

Background

The Southeast Alaska Purse Seine Salmon Fishery is a commercial fishery in Alaska State waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC).

The Fishing Capacity Reduction Program was established under the Consolidations Act of 2005 (Section 209 of Title II of Division B of Public Law 108–447). This Federal law was subsequently amended by Section 121 of Public Law 109–479 (the Magnuson-Stevens Reauthorization Act of 2006) codified at 16 U.S.C. 1801 *et seq.* The authority for the Southeast Revitalization Association (SRA) to conduct this program under Alaska law is AS 16.40.250.

Based on these Federal and state measures, the NMFS established regulations in the **Federal Register**, 76 FR 61986 (October 6, 2011), to administer and implement the program.

The purpose of the program and this plan is to permanently reduce the number of limited entry fishing permits issued by the CFEC for the Fishery thereby promoting economic efficiency and improving the conservation and management of the Fishery.

Congress authorized a $23.5 million dollar loan to finance a fishing capacity reduction program in the Southeast Alaska Purse Seine Salmon Fishery. NMFS published proposed program regulations on (76 FR 29707, May 23, 2011) and final program regulations on (76 FR 61986, October 6, 2011) to implement the reduction program.

In 2012, NMFS conducted a referendum to determine the remaining fishermen's willingness to repay a $13.1 million fishing capacity reduction loan to remove 64 permits. After a majority of permit holders approved the loan, NMFS disbursed payments to the successful bidders and began collecting fees to repay the loan. Since only $13.1 million was expended from the total loan amount, $10.4 million in funds remained available.

In 2018, the SRA informed NMFS that they wished to access the remaining loan amounts to undertake a second buyback. To implement this next buyback, the SRA, on behalf of the reduction fishery, was required to draft and submit a reduction plan to NMFS. On June 21, 2018, the SRA submitted a reduction plan to access $10.1 million of the remaining $10.4 million in funds to remove 36 permits. NMFS approved the proposed second fishing capacity reduction plan in November 2018.

NMFS published a notice of eligible voters on (83 FR 62302, December 3, 2018) informing the public of the permanent permit holders eligible to vote in the referendum and informing the eligible voters of the referendum voting period.

Purpose

The purpose of this notice is to announce the current fee rates for the reduction fishery in accordance with the framework rule at 50 CFR 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee to a rate that will be reasonably necessary to ensure reduction loan repayment within the specified 40-year term.

For the 2022 fishing season, the fee rate for Loan A was one percent and Loan B was 2.5 percent of the landed value and any subsequent bonus payment. Loan A is currently well ahead of the scheduled amortization and will remain so keeping the rate at one percent of gross value of salmon sold. Loan B is also ahead of the scheduled amortization. Beginning June 1, 2023, the Loan B fee rate will be decreased from 2.5 percent to one percent of gross value of salmon sold and is projected to be remain ahead at the end of the 2023 season.

Fish buyers may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/*. Please visit the NOAA Fisheries website for additional information at: *https://www.fisheries.noaa.gov/alaska/funding-and-financial-services/southeast-alaska-purse-seine-salmon-fishery-buyback-program.*

Notice

The new fee rate for the Southeast Alaska Purse Seine Salmon Fishery will begin on June 1, 2023.

From and after this date, all subsector members paying fees on the Southeast Alaska Purse Seine Salmon Fishery shall begin paying program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on (76 FR 61985, October 6, 2011).

Authority: 16 U.S.C. 1861 *et seq.;* Pub. L. 108–447.

Dated: May 24, 2023.

Brian T. Pawlak,

Chief Financial Officer/Chief Administrative Officer, Director Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2023–11638 Filed 5–26–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2023–0023]

Expansion and Extension of the Climate Change Mitigation Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: On June 3, 2022, the United States Patent and Trademark Office (USPTO) implemented the Climate Change Mitigation Pilot Program as a component of its ongoing efforts to encourage and incentivize innovation in the climate space and as an example of its commitment to policies tackling climate change. The initial phase of the

program—ending June 5, 2023—has sought to positively impact the climate by accelerating the examination of patent applications for products and processes designed to reduce greenhouse gas emissions. Through this notice, the USPTO is expanding the program to include innovations in any economic sector that are designed to make progress toward achieving net-zero greenhouse gas emissions. This includes innovations designed to remove greenhouse gases already present in the atmosphere; reduce and/or prevent additional greenhouse gas emissions; and/or monitor, track, and/or verify greenhouse gas emission reductions. The USPTO is also increasing the filing limitations for petitions under the program and extending the duration of the program. These changes will permit more applications to qualify for the program, thereby allowing more innovations that will aid in achieving national climate goals to be advanced out of turn for examination. As with the existing program, applications accepted into the expanded program will be advanced out of turn (accorded special status) for first action on the merits. The conditions, eligibility requirements, and guidelines of the expanded program will be the same as those established for the existing program, unless modified by this notice. By expanding and extending the program, the USPTO aims to emphasize the urgency of zero- and negative-emissions solutions, and further encourage investment in an equitable, clean energy future.

DATES: *Pilot Duration:* The Climate Change Mitigation Pilot Program, as expanded by this notice, will run from June 6, 2023, until either June 7, 2027, or the date the USPTO accepts a total of 4,000 grantable petitions (considering both the existing and expanded programs), whichever occurs first. The USPTO may, at its sole discretion, terminate the program depending on factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the program is terminated, the USPTO will notify the public. The USPTO will continue to indicate on its website the total number of petitions filed and the number of applications accepted into the program.

FOR FURTHER INFORMATION CONTACT: Kristie A. Mahone, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–272–9016 or *Kristie.Mahone@uspto.gov;* or Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–272–7711 or *Susy.Tsang-Foster@uspto.gov.* For questions on electronic filing, please contact the Patent Electronic Business Center at 866–217–9197 during its operating hours of 6 a.m. to midnight ET, Monday–Friday, or *ebc@uspto.gov.* For questions related to a particular petition, please contact the Office of Petitions at 571–272–3282 during its operating hours of 8:30 a.m. to 5 p.m. ET, Monday–Friday.

SUPPLEMENTARY INFORMATION:

Part I. Background

Executive Order 14008, dated January 27, 2021, calls for immediately reducing greenhouse gas emissions and achieving net-zero greenhouse gas emissions no later than 2050. *See* E.O. 14008 of January 27, 2021: Tackling the Climate Crisis at Home and Abroad, 86 FR 7619 (Feb. 1, 2021). Net-zero greenhouse gas emissions means that the measure of greenhouse gas emitted into the atmosphere is counterbalanced by the measure of greenhouse gas removed from the atmosphere. While accelerating innovations designed to reduce emissions is of foremost importance, solutions for removing greenhouse gases from the atmosphere are critical because of the unlikelihood of eliminating emissions in all sectors. *See* The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050 (Nov. 2021), available at *www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf* (2021 Long-Term Strategy).

In 2022, the USPTO published a notice implementing the Climate Change Mitigation Pilot Program, which aligns with and supports Executive Order 14008. *See* Climate Change Mitigation Pilot Program, 87 FR 33750 (June 3, 2022) (2022 Notice). The initial phase of the program has focused on innovations that reduce greenhouse gas emissions. Specifically, the existing program permits an application that claims certain products and/or processes designed to reduce greenhouse gas emissions to be advanced out of turn (accorded special status) for first action on the merits without meeting all of the requirements of the accelerated examination program, if the applicant files a petition to make special under 37 CFR 1.102(d) that meets all the requirements in the 2022 Notice. In the petition to make special, the applicant must certify that: (1) the claimed invention covers a product or process that mitigates climate change, (2) the product or process is designed to reduce greenhouse gas emissions, (3) the applicant has a good faith belief that expediting patent examination of the application will likely have a positive impact on the climate, and (4) the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than four other nonprovisional applications in which a petition to make special under this program has been filed. The USPTO, however, committed to periodically evaluating the program to determine whether and to what extent coverage should be expanded or limited.

Part II. Expansion of the Pilot Program

A. Subject Matter Coverage

As stressed in the 2021 Long-Term Strategy, reaching net-zero greenhouse gas emissions by 2050 necessitates a robust pursuit of removal solutions, given the unlikelihood of completely eliminating greenhouse gas emissions from some activities. Further, technologies designed to monitor, track, and/or verify greenhouse gas emission reductions are anticipated as necessary expedients. *See* U.S. Innovation to Meet 2050 Climate Goals: Assessing Initial R&D Opportunities (Nov. 2022), available at *www.whitehouse.gov/wp-content/uploads/2022/11/U.S.-Innovation-to-Meet-2050-Climate-Goals.pdf.* Considering the criticality of tackling climate change and the experiential knowledge of the USPTO resources needed to deliver accelerated review in the climate space, the USPTO is expanding the program to include a broader range of technologies designed to make progress toward achieving the goal of net-zero emissions. Specifically, the USPTO is replacing the second certification set forth in the 2022 Notice with a certification ''that the product or process is designed to: (a) remove greenhouse gases already present in the atmosphere; (b) reduce and/or prevent additional greenhouse gas emissions; and/or (c) monitor, track, and/or verify greenhouse gas emission reductions.'' Applicants must continue to certify that the claimed invention covers a product or process that mitigates climate change, and that they have a good faith belief that expediting patent examination of the application will likely have a positive impact on the climate, as set forth in the 2022 Notice.

B. Filing Limitations

The USPTO is also increasing the filing limitations to afford more opportunities to participate. In particular, an applicant may file a petition to participate in the program if

the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than 12—up from 4—other nonprovisional patent applications in which a petition to make special under this program has been filed. Specifically, the USPTO is replacing the fourth certification set forth in the 2022 Notice with a certification ''that the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than 12 other nonprovisional applications in which a petition to make special under this program has been filed.'' If the inventor or any one of the joint inventors of the current application has been named as the inventor or a joint inventor on more than 12 other nonprovisional patent applications in which petitions under this program have been filed, then the petition for the current application may not be appropriately filed. Any petitions filed during the existing program count toward the filing limitations in the expanded program.

C. Office Form Required for Filing a Petition

Petition form PTO/SB/457, titled ''CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM,'' is still required to make the petition under the program. Other than the changes to the subject matter coverage and the filing limitations described above, the conditions, eligibility requirements, and guidelines of the program will be the same as those provided in the 2022 Notice. The USPTO will modify the certifications contained in petition form PTO/SB/457—at numbered items 2 and 11—to correspond with the changes described above. The modified petition form will be available for use on June 6, 2023, at *www.uspto.gov/patents/apply/forms.*

The USPTO reminds applicants that under the 2022 Notice, the petition to make special (form PTO/SB/457) must be electronically filed using Patent Center, with the application or entry into the national stage under 35 U.S.C. 371, or within 30 days of the filing date or entry date of the application. The USPTO encourages applicants interested in participating in the program to review the 2022 Notice, along with the information provided on the program's web page, at *www.uspto.gov/patents/laws/patent-related-notices/climate-change-mitigation-pilot-program.*

Part III. Extension of the Pilot Program

The program, as expanded by this notice, will run from June 6, 2023, until either June 7, 2027, or until the date that the USPTO accepts a total of 4,000 grantable petitions, whichever occurs first. The total of 4,000 grantable petitions includes petitions granted under the existing and expanded programs combined. Information concerning the number of petitions that have been filed and granted under the program will continue to be available on the program's web page. The USPTO may further extend the program (with or without modifications) depending on feedback from the participants and the effectiveness of the program.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–11660 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Native American Tribal Insignia Database

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 8, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Native American Tribal Insignia Database.

OMB Control Number: 0651–0048.

Needs and Uses: The Trademark Law Treaty Implementation Act of 1998 [1] (Pub. L. 105–330, 302, 112 Stat. 3071) required the USPTO to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999. One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database. The USPTO published the final procedures for establishing and maintaining the tribal insignia database in the **Federal Register** on August 24, 2001 (66 FR 44603).[2]

The USPTO database of official tribal insignias provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia. Section 2(a) of the Trademark Act, 15 U.S.C. 1052(a), disallows the registration of marks that falsely suggest a connection with a non-sponsoring person or institution, including a Native American tribe. The database thereby assists trademark examining attorneys in their examination of applications for trademark registration by serving as a reference for determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database, included within Trademark Electronic Search System (TESS),[3] is available to the public on the USPTO website, and includes an online help program for using the system. More information about the program is available on the website at *https://www.uspto.gov/trademarks/laws/native-american-tribal-insignia.*

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be allowed or refused registration

[1] *https://www.uspto.gov/trademark/laws-regulations/trademark-law-treaty-implementation-act.*

[2] *https://www.federalregister.gov/documents/2001/08/24/01-21479/establishment-of-a-database-containing-the-official-insignia-of-federally-and-state-recognized.*

[3] *https://www.uspto.gov/trademarks-application-process/search-trademark-database.*

as a trademark pursuant to 15 U.S.C. 1051 *et seq.*

Requests from federally recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) a depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This information collection includes the information needed by the USPTO to enter an official insignia for a federally or state-recognized Native American tribe into a database of such insignia. No forms are associated with this information collection.

Forms: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: State, Local, and Tribal Governments.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 5 respondents.

Estimated Number of Annual Responses: 5 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take respondents approximately 1 hour to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $19.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

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 0651–0048.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0048 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–11710 Filed 5–31–23; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER FINANCIAL PROTECTION BUREAU

Advisory Committees Solicitation of Applications for Membership

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Consumer Financial Protection Act) section 1014 requires the Director of the Consumer Financial Protection Bureau (CFPB) to establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information. Pursuant to the executive and administrative powers conferred on the CFPB by section 1012 of the Consumer Financial Protection Act, the Director of the Consumer Financial Protection Bureau established the discretionary committees, Community Bank Advisory Council, Credit Union Advisory Council, and Academic Research Council under agency authority in accordance with the provisions of the Federal Advisory Committee Act, as amended. This notice advises individuals who wish to serve as a member of the Consumer Advisory Board, Community Bank Advisory Council, Credit Union Advisory Council, or Academic Research Council, of the opportunity to be considered for those advisory committees. The CFPB expects to announce the selection of new members later this year.

DATES: Completed applications received between 12:00 a.m. EDT on Monday, July 3, 2023, and 11:59 p.m. EDT on Sunday, July 16, 2023, will be considered for membership on the committees.

ADDRESSES: Individuals who meet the qualifications for membership and wish to be considered for the CFPB's advisory committees, may apply and submit required documents via *https://acam.consumerfinance.gov/.* The qualifications for membership and the information required for consideration is described below.

If an applicant requires a reasonable accommodation to complete the application, please contact Kimberley Medrano, Senior Advisor, at *CFPB_BoardandCouncilApps@cfpb.gov.*

If electronic submission is not feasible, submissions may be mailed to the Consumer Financial Protection Bureau, ATTN: Kimberley Medrano, 1700 G Street NW, Washington, DC 20552. Submissions by mail must be postmarked on or before Sunday, July 16, 2023. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, candidates are encouraged to submit applications electronically.

FOR FURTHER INFORMATION CONTACT: Kimberley Medrano, Senior Advisor, Advisory Board and Councils, 202–590–6736, or *CFPB_BoardandCouncilApps@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Per section 1021(c) of the Consumer Financial Protection Act, the primary functions of the Bureau are—

1. Conducting financial education programs;

2. Collecting, investigating, and responding to consumer complaints;

3. Collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

4. Subjection to section 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and

6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

The Consumer Advisory Board is a crowdsourced group of experts on consumer protection, consumer financial products or services, community development, fair lending, civil rights, underserved communities, and communities that have been significantly impacted by higher priced mortgage loans. They are charged with identifying and assessing the impact of emerging products, practices, or services on consumers and other market participants. The Community Bank Advisory Council advises us on regulating consumer financial products or services, offering the unique perspectives of community banks. They share information, analysis, and recommendations to better inform our policy development, rulemaking, and engagement work. The Credit Union Advisory Council advises us on regulating consumer financial products or services, offering the unique perspectives of credit unions. They share information, analysis, and recommendations to better inform our policy development, rulemaking, and engagement work. The Academic Research Council advises us on our strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives. Members also provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions.

II. Qualifications

- *Consumer Advisory Board:* Membership for the committee will be drawn from a pool of candidates recommended by the regional Federal Reserve Bank Presidents. Candidates must have experience in consumer protection, financial services, community development, fair lending and civil rights, or consumer financial products or services, or represent depository institutions that primarily serve underserved communities, communities that have been significantly impacted by higher-priced mortgage loans, or the interests of covered persons and consumers, without regard to party affiliation in accordance with section 1014(b) of the Consumer Financial Protection Act.
- *Community Bank Advisory Council:* Per section 12 of the committee's charter, membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or community banks with total assets of more than $10 billion. Only bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership.
- *Credit Union Advisory Council:* Per section 12 of the committee's charter, membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion. Only credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership.
- *Academic Research Council:* Per section 12 of the committee's charter, members are social science experts and academics with diverse points of view, such as experienced economists with a strong research and publishing or practitioner background, and a record of involvement in research and public policy, including public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and rigorous empirical and theoretical analysis including those specializing in household finance, finance, financial education, labor economics, industrial organization, public economics, social work, psychology, and law and economics; and experts from related social sciences related to the CFPB's mission. In particular, the Director will seek to identify academics with strong methodological and technical expertise in structural or reduced form econometrics, modeling of consumer decision-making, survey and randomized controlled trial methods, cost-benefit analysis, welfare economics and program evaluation, or marketing.

The CFPB has a special interest in ensuring that the perspectives of women and men, all racial and ethnic groups, and individuals with disabilities are adequately represented on the advisory committees, and therefore, encourages applications from qualified candidates from these groups. The CFPB also has a special interest in establishing a committee that is represented by a diversity of viewpoints and constituencies, and therefore encourages applications from qualified candidates who:

(1) Represent the United States' geographic diversity; and

(2) Represent the interests of special populations identified in the Consumer Financial Protection Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

The CFPB does not accept applications from non-US citizens, federally registered lobbyists, convicted felons or current elected officials for a position on the advisory committees. Selection of members shall not constitute an endorsement by the CFPB of the member's organization or other affiliation.

III. Application

Only complete applications will be given consideration for membership on the advisory committees. Candidates must visit the Advisory Committee Application Management system (*https://acam.consumerfinance.gov/*) to answer the questionnaire and submit the required documents by the deadline, in order to be considered for a position on the advisory committees.

A complete application package must include the questionnaire, a cover letter describing your primary qualifications, a resume/CV with relevant positions and responsibilities, and a third-party letter of recommendation. All documents including the questionnaire, may be submitted via *https://acam.consumerfinance.gov/.* Letters of recommendation may be addressed to Director Rohit Chopra. Questions regarding the Advisory Committee Application Management system or this solicitation may be directed to *CFPB_BoardandCouncilApps@cfpb.gov.*

Candidates will be asked to participate in an interview, and provide information related to financial holdings and/or professional affiliations, in addition to passing a background check.

Emily Ross,

Acting Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2023–10541 Filed 5–31–23; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–71]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–71 with attached Policy Justification and Sensitivity of Technology.

Dated: May 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

January 14, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-71, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of France for defense articles and services estimated to cost $88 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 21–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of France

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$47 million
Other	$41 million
TOTAL	$88 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales (FMS) case FR–D–DAJ, was below congressional notification threshold at $71 million ($24.2 million in MDE) and included five (5) Communications Intelligence Sensor Pod Suites (MDE). The Government of France has requested the case be amended to include up to eight (8) Communications Intelligence Sensor Pod Suites (MDE) and additional non-MDE services. This amendment will push the current case above the MDE notification threshold and thus requires notification of the entire case.

Major Defense Equipment (MDE):

Eight (8) Communications Intelligence Sensor Pod Suites

Non-MDE:

Also included is ground handling equipment; spares and repair parts; consumables and accessories; secure communications and cryptographic devices; software and support services; publications and technical documentation; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (FR–D–DAJ)

(v) *Prior Related Cases, if any:* FR–D–STE, FR–D–SAC, and FR–D–SAD

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* January 14, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France—MQ–9 Communications Intelligence Sensor Pod Suites

The Government of France has requested to buy up to eight (8) Communications Intelligence Sensor Pod Suites, that will be added to a previously implemented case. The original FMS case and amendments, valued at $71 million, included five (5) Communications Intelligence Sensor Pod Suites. Therefore, this notification is for a total of eight (8) Communications Intelligence Sensor Pod Suites. Also included is ground handling equipment; spares and repair parts; consumables and accessories; secure communications and cryptographic devices; software and support services; publications and technical documentation; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated total cost is $88 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by helping to improve the security of a NATO Ally that is an important force for political stability and economic progress in Europe.

The proposed sale will improve France's capability to meet current and future threats by ensuring the operational readiness of the French Air and Space Force. France's MQ–9 aircraft fleet provides Intelligence, Surveillance, and Reconnaissance that supports coalition operations. France will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be BAE Systems, York, PA. General Atomics Aeronautical Systems, San Diego, CA is on contract for integration work only. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale may require the assignment of additional U.S. Government or contractor representatives to France.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MQ–9 Communications Intelligence (COMINT) Sensor Pod Suites are for the MQ–9 aircraft that France previously acquired. The COMINT Sensor Pod Suite is an additional payload sensor which provides intelligence, data collection, and analysis capabilities. The pods will provide France's MQ–9 program with the equipment necessary to support capabilities that France is already employing.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that France can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of France.

[FR Doc. 2023–11583 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–02]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 22–02 with attached Policy Justification and Sensitivity of Technology.

Dated: May 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

December 21, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-02, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Lithuania for defense articles and services estimated to cost $125 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Jedidiah P. Royal
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 22–02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Lithuania

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$109.30 million
Other	$ 15.70 million
TOTAL	$125.00 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:* Foreign Military Sales (FMS) case LH–B–UDK, was below congressional notification threshold at $28.23 million ($23.11 million in MDE) and included one hundred eleven (111) Javelin FGM–148F missiles and ten (10) Javelin Command Launch Units (CLUs). The Government of Lithuania has requested the case be amended to include an additional two hundred thirty (230) Javelin FGM–148F missiles and twenty (20) Javelin CLUs. This amendment will push the current case above the MDE notification threshold and thus requires notification of the entire case.

Major Defense Equipment (MDE):
Three hundred forty-one (341) Javelin FGM–148F Missiles
Thirty (30) Javelin Command Launch Units (CLUs)
Non-MDE:
Also included are battery chargers; Enhanced Producibility Basic Skills Trainer (EPBST); training; publications; support equipment; United States Government technical assistance; and other related elements of logistics and program support.

(iv) *Military Department:* Army (LH–B–UDK)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 21, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Lithuania—Javelin Missiles

The Government of Lithuania has requested to buy an additional two hundred thirty (230) Javelin FGM–148F missiles and twenty (20) Javelin Command Launch Units (CLUs), that will be added to a previously implemented case that was under threshold. The original FMS case, valued at $28.23 million, included one hundred eleven (111) Javelin FGM–148F missiles and ten (10) Javelin CLUs. Therefore, this notification is for a total of three hundred forty-one (341) Javelin FGM–148F missiles and thirty (30) Javelin CLUs. Also included are battery chargers; Enhanced Producibility Basic Skills Trainer (EPBST); training; publications; support equipment; United States Government technical assistance; and other related elements of logistics and program support. The total estimated cost is $125 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a NATO ally that is an important force for ensuring peace and stability in Europe.

The proposed sale will help Lithuania build its long-term defense capacity to defend its sovereignty and territorial integrity in order to meet its national defense requirements. It is vital to the U.S. national interest to assist Lithuania in developing and maintaining a strong and ready self-defense capability. Lithuania will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon/Lockheed Martin Corporation Joint Venture, Orlando, FL, and Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to Lithuania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft, and watercraft. The system weighs 49.5 points and has a maximum range in excess of 2,500 meters. The system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Command Launch Unit (CLU) and a round contained in a disposable launch tube assembly. The CLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The CLU's thermal sight is a second generation Forward Looking Infrared (FLIR) sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the CLU after mating and prior to launch.

4. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for target undercover). An onboard flight computer guides the missile to the selected target.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the Government of Lithuania can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Lithuania.

[FR Doc. 2023–11582 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0048]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's 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.

DATES: Consideration will be given to all comments received by July 31, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: QuickCompass of Sexual Assault Prevention and Response Personnel (QSAPR); OMB Control Number 0704–0603.

Needs and Uses: The QuickCompass of Sexual Assault Prevention and Response Personnel (QSAPR) assesses perceived reprisal or retaliation to incidents (professionally or otherwise), access to sufficient physical and mental health services as a result of the nature of their work, access to installation and unit commanders, access to both victims' and alleged offenders' immediate commander(s), responsiveness of commanders to Sexual Assault Response Coordinators (SARCs), support and services provided to sexual assault victims, understanding of others of the process and their willingness to assist, adequacy of training received by SARCs and Sexual Assault Prevention and Response (SAPR) Victims' Advocates (VAs) to effectively perform their duties, and other factors affecting the ability of SARCs and SAPR VAs to perform their duties. In addition, the results of the survey will assess progress, identify shortfalls, and revise policies and programs as needed. Data will be aggregated and reported triennially in perpetuity. Ultimately, the study will provide a report to Congress and all of the data, programs, and computational details necessary for replication and peer review.

Affected Public: Individuals or households.

Annual Burden Hours: 1,667.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Annual Responses: 5,000.

Average Burden per Response: 20 minutes.

Frequency: As required.

The target population for this survey will be all SARCs, VAs, and Special Victims' Counsels (SVCs)/Victims' Legal Counsels (VLCs) who are either Active Duty, Reserves/National Guard, or a DoD civilian employee. The survey will solicit insights into characteristics of SAPR programs to better understand how responders are trained for their position and their perceptions of how well their program is supported and executed.

The full online survey system will be hosted internally on Office of People Analytics (OPA) contractor servers. Participants will receive email communications notifying them about the importance of the survey, the confidential nature of the data collection, how the data will be used, and how to access the website. Respondents will be given a unique link and passcode to enter the survey in all email communications. They will receive up to no more than seven emails during the survey fielding. The reminder emails will be sent only to those selected sample members who have not yet responded to the survey or who are not active refusers. Once they complete the questions on the survey, there is a submit button to send their response.

OPA weights the eligible respondents in order to make inferences about the entire population of SAPR Personnel. The weighting methodology utilizes standard weighting processes.

Dated: May 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11574 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–67]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–67 with attached Policy Justification.

Dated: May 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

January 7, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-67, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of France for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 21–67

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of France

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$300 million
TOTAL	$300 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:
Follow-on Contractor Logistics Support to include contractor provided MQ–9 aircraft components, spares and accessories; repair and return; software and software support services; simulator software; personnel training and training equipment; publications and technical documentation; U.S. Government and contractor provided engineering, technical and logistical support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (FR–D–QAO)

(v) *Prior Related Cases, if any:* FR–D–STE, FR–D–SAC, FR–D–SAD

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* January 7, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France—MQ–9 Follow-on Contractor Logistics Support

The Government of France has requested to buy follow-on Contractor Logistics Support to include contractor provided MQ–9 aircraft components, spares and accessories; repair and return; software and software support services; simulator software; personnel training and training equipment; publications and technical documentation; U.S. Government and contractor provided engineering, technical and logistical support services; and other related elements of logistical and program support. The estimated total cost is $300 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally that is an important force for political stability and economic progress in Europe.

The proposed sale will improve France's capability to meet current and future threats by ensuring the operational readiness of the French Air Force. France's MQ–9 aircraft fleet provides Intelligence, Surveillance, and Reconnaissance support that directly supports U.S. and coalition operations around the world. France will have no difficulty absorbing these support services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be General Atomics, Poway, CA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to France.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2023–11580 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–05]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 22–05 with attached Policy Justification.

Dated: May 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

January 12, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-05, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Greece for defense articles and services estimated to cost $233 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Section 620C(d) Certification

BILLING CODE 5001–06–C

Transmittal No. 22–05

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Greece

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$233 million
TOTAL	$233 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:
Included are parts and services to support follow-on depot level maintenance and sustainment of F100–PW–229 engines to include spare, repair parts, and accessories; repair and return services; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistical services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (GR–D–QAK)

(v) *Prior Related Cases, if any:* GR–D–SNX, GR–D–SNY, GR–D–QCG

(vi) *Sales Commission, Fee, etc. Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* January 12, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece—Follow-on Support for F100–PW–229 Engine Maintenance

The Government of Greece has requested to buy parts and services to support follow-on depot level maintenance and sustainment of F100–PW–229 engines to include spare, repair parts, and accessories; repair and return services; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistical services; and other related elements of logistical and program support. The overall total estimated value is $233 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally, which is an important partner for political stability and economic progress in Europe.

The proposed sale will improve Greece's capability to meet current and future threats by providing greater depth of repair capability for engines on their F–16 Block 52+/52+ Advanced aircraft, sustaining their weapon system, and improving aircraft capability rates. Greece has demonstrated a continued commitment to modernizing its military and will have no difficulty absorbing this additional sustainment support into its armed forces.

The proposed sale of these services will not alter the basic military balance in the region.

There are no principal contractors for this proposed sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives outside the United States.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2023–11586 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, June 21, 2023 from 8:15 a.m. to 5 p.m. and Thursday, June 22, 2023 from 8:15 a.m. to 4 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, Designated Federal Officer (DFO), (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *kevin.a.doxey.civ@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of 5 United States Code (U.S.C.) chapter 10 (commonly known as the ''Federal Advisory Committee Act (FACA)''), 5 U.S.C. 552b(c) (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting

The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet to discuss the 2023 DSB Summer Study on Climate Change and Global Security (''the DSB Summer Study'').

Agenda

The meeting will begin on Wednesday, June 21, 2023 at 8:15 a.m. with administrative opening remarks from Mr. Kevin Doxey, DFO and Executive Director, and a classified overview of the objectives of the Summer Study from Dr. Eric Evans, the DSB Chair. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Following break, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Next, members will meet in a breakout session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. The meeting will adjourn at 5:00 p.m. On Thursday, June 22, 2023, the DSB members will meet in a breakout session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Following break, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. The meeting will adjourn at 4:00 p.m.

Meeting Accessibility

In accordance with section 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements

In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a

planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: May 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11593 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0A]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 22–0A.

Dated: May 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

January 12, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 22-0A. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 15-26 of April 28, 2015.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal

Transmittal No. 22–0A

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C)), (AECA)

(i) *Purchaser:* Government of Australia

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 15–26

Date: April 28, 2015

Military Department: Navy

(iii) *Description:* On April 28, 2015, Congress was notified by Congressional certification transmittal number 15–26 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of follow-on sustainment support and services in support of three (3) Hobart Class Destroyers. The sustainment efforts included AEGIS computer software and hardware updates, system integration and testing, tools and test equipment, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, aircrew trainer devices upgrades, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated total cost was $275 million. Major Defense Equipment (MDE) constituted $0 of this total.

On June 27, 2019, Congress was notified by Congressional

certification transmittal number 0L–19 of Australia's request to purchase upgrade kits for their Multifunctional Information Distribution System (MIDS) Low Volume Terminal (LVT) equipment installed on the Hobart Class Destroyers. The MIDS LVT Block Upgrade 2 (BU2) kits provide a suite of hardware, software and firmware updates for the MIDS LVT units to provide a more robust security and enhanced throughput (higher data rate). The total case value remained $275 million.

On May 27, 2020, Congress was notified by Congressional certification transmittal number 0E–20 of Australia's request to purchase the following MDE items: three (3) MIDS Joint Tactical Radio System (JTRS) equipment suites to be installed on the Hobart Class Destroyers; three (3) MIDS on Ship (MOS) Modernization (MOS Mod) equipment suites to replace the current MOS systems installed on the HC Destroyers; and three (3) Command and Control Processor System (C2PS) equipment suites to replace the current legacy C2P systems installed on the HC Destroyers. This equipment resulted in total MDE costs of $12.0 million and a corresponding decrease in non-MDE value by $12.0 million. The total case value remained $275 million.

This transmittal notifies Australia's request for continued sustainment and support services for its three (3) Hobart Class Destroyers.

The overall MDE value will remain at $12.0 million. The total case value will increase to $600 million.

(iv) *Significance:* This proposed sale will contribute to the modernization of the Royal Australian Navy HC Destroyers, improve the Royal Australian Navy's capability to conduct self-defense and regional security missions, and enhance its interoperability with the United States and other NATO members.

(v) *Justification:* This proposed sale supports the foreign policy and national security objectives of the United States by improving the security of a Major Non-NATO Ally that is a key partner of the United States in ensuring peace and stability around the world.

(vi) *Sensitivity of Technology:* No additional MDE is proposed as part of this transmittal. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* January 12, 2022

[FR Doc. 2023–11581 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0024]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Naval Air Systems Command Candidate Form; OMB Control Number 0703–YELL.

Type of Request: Existing collection currently in use without an OMB Control Number.

Number of Respondents: 7,256.

Responses per Respondent: 1.

Annual Responses: 7,256.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 605.

Needs and Uses: In order to properly evaluate candidates' qualifications for employment, Naval Air Systems Command (NAVAIR) must collect the information necessary to rate applicants for Federal jobs in accordance with Title 5 of the United States Code sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394. Per 5 U.S.C. 1104, the Director of the Office of Personnel Management may delegate authority for competitive examinations to the heads of agencies in the executive branch and other agencies employing persons in the competitive service. In an effort to improve the effectiveness and efficiency of NAVAIR recruitment efforts, per direction of NAVAIR's Executive Director, the Command researched best business practices and associated Commercial off the Shelf (COTS) products that would address the functional and technical requirements to support candidate tracking. Due to unprecedented hiring demand in 2017 and 2018 and the direction by the Principal Director to the Deputy Assistant Secretary of Defense, Civilian Personnel Policy, NAVAIR moved forward with a pilot of a SaaS IT System product named Yello to meet mission demands. The application enables Recruiters to collaborate to attract and engage top talent while providing vital command recruiting metrics that provide meaningful insights, leading to more informed decisions and more strategic recruitment initiatives and outcomes. Additionally, it improves the ability to control access to candidate data and allows NAVAIR the ability to view, clean, analyze, and aggregate data as necessary to perform return on investment (ROI) data analysis of recruiting efforts. The web-based candidate information form provides a digital mechanism to capture candidates' information in real time at recruitment events, via marketing and sourcing campaigns. The web form is hosted on the Yello Pro app and captures basic candidate information, as well as educational and experience details, allowing recruiters to review, assess, and select for interviews and contingent offers. Using the web form, NAVAIR can actively or passively look for candidates that align with hiring requirements providing full transparency and access to hiring manager's enterprise wide.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11572 Filed 5–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs (State Grants)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) State Grants, Assistance Listing Number 84.334S. This notice relates to the approved information collection under OMB control number 1840–0821, Application for GEAR UP State Grants.

DATES:

Applications Available: June 1, 2023.

Deadline for Transmittal of Applications: July 31, 2023.

Deadline for Intergovernmental Review: August 30, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Ben Witthoefft, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C118, Washington, DC 20202–6450. Telephone: 202–453–7576. Email: *Ben.Witthoefft@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GEAR UP program is a discretionary grant program that encourages eligible entities to provide support, and maintain a commitment to, eligible students from low-income backgrounds, including students with disabilities, to assist the students in obtaining a secondary school diploma (or its recognized equivalent) and to prepare for and succeed in postsecondary education. Under the GEAR UP program, the Department awards grants to two types of entities: (1) States and (2) eligible partnerships.

Background: In this notice, the Department invites applications for State grants only. Required services under the GEAR UP program are specified in section 404D(a) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–24(a)), and permissible services under the GEAR UP program are specified in section 404D(b) and (c) of the HEA (20 U.S.C. 1070a–24(b) and (c)). Grantee activities must include providing financial aid information for postsecondary education, encouraging enrollment in rigorous and challenging coursework in order to reduce the need for remediation at the postsecondary level, implementing activities to improve the number of participating students who obtain a secondary school diploma and who complete applications for and enroll in a program of postsecondary education, and providing scholarships as specified in section 404E of the HEA. Additional permissible activities for State grantees are specified in sections 404D(b) and (c) of the HEA.

Priorities: This notice contains two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), Competitive Preference Priority 1 is from section 404A(b)(3) of the HEA (20 U.S.C. 1070a–21(b)(3)) and the GEAR UP program regulations (34 CFR 694.19). Competitive Preference Priority 2 is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets the priorities.

These priorities are:

Competitive Preference Priority 1—Successful State GEAR UP grant prior to August 14, 2008 (Up to 2 points).

We give priority to an eligible applicant for a State GEAR UP grant that has (a) carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and (b) a prior demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Competitive Preference Priority 2—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (Up to 8 points).

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or more of the following priority areas:

(a) Establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement (up to 4 points); and

(b) Providing secondary school students with access to career exploration and advising opportunities to help students make informed decisions about their postsecondary enrollment decisions and to place them on a career path (up to 4 points).

Definitions: The definitions of ''demonstrates a rationale,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1(c). The definition of ''underserved students'' is from the Supplemental Priorities:

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student in postsecondary education in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) An English learner.

(d) A migrant student.

(e) A student without documentation of immigration status.

(f) A student who is the first in their family to attend postsecondary education.

(g) A student enrolling in or seeking to enroll postsecondary education for the first time at the age of 20 or older.

(h) A student who is working full-time while enrolled in postsecondary education.

(i) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(j) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

For purposes of the definition of *underserved student* only—

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Program Authority: 20 U.S.C. 1070a–21—1070a–28.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 694. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $20,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $3,000,000 – $5,000,000.

Estimated Average Size of Awards: $4,000,000.

Maximum Award: We will not make an award for a State grant exceeding $5,000,000 for a single budget period of 12 months. Additionally, no funding will be awarded for increases in years 2 through 7.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Either 72 months or 84 months.

Note: An applicant that wishes to seek funding for a seventh project year (*i.e.,* for a project period greater than 72 months) in order to provide project services to GEAR UP students through their first year of attendance at an institution of higher education (IHE) must propose to do so in its application.

III. Eligibility Information

1. *Eligible Applicants:* States (as defined in section 103(20) of the HEA (20 U.S.C. 1003(20)), which includes the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. Per congressional direction in House Report 117–403 2023 (Pub. L. 117–328), only States without an active State GEAR UP grant, or States that have an active State GEAR UP grant that is scheduled to end prior to October 1, 2023, are eligible to receive a new State GEAR UP award in this competition. States with grants remaining open beyond October 1, 2023, for a no-cost extension period or for the sole purpose of data collection and analysis activities are not considered active for purposes of implementing this directive.

2. a. *Cost Sharing or Matching:* Section 404C(b)(1) of the HEA requires grantees under this program to provide from State, local, institutional, or private funds, not less than 50 percent of the cost of the program (or one dollar of non-Federal funds for every one dollar of Federal funds awarded), which may be provided in cash or in-kind. The provision also specifies that the match may be accrued over the full duration of the grant award period, except that the grantee must make substantial progress toward meeting the matching requirement in each year of the grant award period.

Section 404C(c) of the HEA provides that in-kind contributions may include (1) the amount of the financial assistance obligated under GEAR UP to students from State, local, institutional, or private funds, (2) the amount of tuition, fees, room or board waived or reduced for recipients of financial assistance under GEAR UP, (3) the amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of non-school organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit and philanthropic organizations, and other organizations, and (4) equipment and supplies, cash contributions from non-Federal sources, transportation expenses, in-kind or discounted program services, indirect costs, and facility usage.

Grantees must include a budget detailing the source of the matching funds and must provide an outline of the types of matching contributions for at least the first year of the grant in their grant applications. Consistent with 2 CFR 200.306(b), any matching funds must be an allowable use of funds consistent with the GEAR UP program requirements and the cost principles detailed in subpart E of 2 CFR part 200, and not included as a contribution for any other Federal award.

b. *Supplement-Not-Supplant:* This competition involves supplement, not supplant funding requirements. Under section 404B(e) of the HEA (20 U.S.C. 1070a–22(e)), grant funds awarded under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program.

c. *Indirect Cost Rate Information:* For entities eligible to apply to this competition, the program regulations at 34 CFR 694.11 limit indirect cost

reimbursement to the rate determined in the entity's negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. Other: *General Application Requirements:* All applicants must meet the following application requirements in order to be considered for funding. The application requirements are from sections 404C(a) and 404E of the HEA (20 U.S.C. 1070a–23(a); 20 U.S.C. 1070a–25).

In order for an eligible entity to qualify for a grant under the GEAR UP program, the eligible entity must submit to the Secretary an application for carrying out a GEAR UP program that—

(a) Describes the activities for which assistance under this program is sought, including how the eligible entity will carry out the required activities described in section 404D(a) of the HEA;

(b) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA, how the eligible entity will meet the requirements of section 404E of the HEA;

(c) Provides assurances that adequate administrative and support staff will be responsible for coordinating the activities described in section 404D of the HEA;

(d) Provides assurances that activities assisted under this program will not displace an employee or eliminate a position at a school assisted under this program, including a partial displacement such as a reduction in hours, wages, or employment benefits;

(e) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA that chooses to use a cohort approach, how the eligible entity will define the cohorts of the students served by the eligible entity pursuant to section 404B(d) of the HEA, and how the eligible entity will serve the cohorts through grade 12, including—

(i) How vacancies in the program under this program will be filled; and

(ii) How the eligible entity will serve students attending different secondary schools;

(f) Describes how the eligible entity will coordinate programs under this program with other existing Federal, State, or local programs to avoid duplication and maximize the number of students served;

(g) Provides such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this program;

(h) Provides information about the activities that will be carried out by the eligible entity to support systemic changes from which future cohorts of students will benefit;

(i) Describes the sources of matching funds that will enable the eligible entity to meet the matching requirement described in section 404C(b); and

(j) Demonstrates, in the case of an eligible entity that is requesting to use more than 50 percent of grant funds on GEAR UP early intervention activities and less than 50 percent of grant funds on scholarships, that the eligible entity has another means or multiple means of providing scholarships that meet the minimum Pell Grant requirements under 20 U.S.C. 1070a–25(d) to students eligible for a GEAR UP scholarship as defined under 20 U.S.C. 1070a–25(g). States requesting an exception from the requirement that they spend at least 50 percent of their grant dollars on scholarships must provide documentation of those other means of providing scholarships to the students eligible for a GEAR UP scholarship as defined under 20 U.S.C. 1070a–25(g) in their application, such as a comprehensive list of other sources of aid that reduce or eliminate the need for the grantee to provide GEAR UP scholarships to eligible students out of their federal funding; the projected number of students that the grantee expects to receive aid through those sources (*e.g.* based on past cohorts, if applicable); and an estimate of the number of students eligible for a GEAR UP scholarship that are not expected to receive aid through those other sources, if any.

4. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants to the following types of entities: Local Educational Agencies (LEAs), State Educational Agencies (SEAs), IHEs, and nonprofit organizations. The grantee may only award subgrants to entities it has identified in an approved application. Under 34 CFR 75.708(d), grantees must ensure that (1) subgrants are awarded on the basis of an approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements; (2) every subgrant includes any conditions required by Federal statute and executive orders and their implementing regulations; and (3) subgrantees are aware of requirements imposed upon them by Federal statute and regulation, including the Federal anti-discrimination laws enforced by the Department.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program. Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make awards by the end of FY 2023.

3. *Funding Restrictions:* We specify unallowable costs in subpart E of 2 CFR part 200. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Under HEA section 404E(b)(1) (20 U.S.C. 1070a–25(b)(1)), a State must use not less than 25 percent and not more than 50 percent of the grant funds for GEAR UP project activities described in HEA section 404D,[1] with the remainder of grant funds spent on scholarships to eligible GEAR UP students described in HEA section 404E. However, HEA section 404E(b)(2) (20 U.S.C. 1070a–25(b)(2)) permits the Secretary to allow a State to use more than 50 percent of grant funds received under this program for GEAR UP project activities described in HEA section 404D if the State demonstrates that it has another means of providing the students eligible for a GEAR UP scholarship as defined under 20 U.S.C. 1070a–25(g) with the financial assistance described in HEA section 404E and describes such means in the State's application.

[1] Excluding the provision of funds for postsecondary scholarships required by HEA section 404D(a)(4).

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 65 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, excluding titles, headings, footnotes, quotations, references, captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point font or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

We recommend that any application addressing the competitive preference priorities include no more than three additional pages for each priority addressed.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210.

(a)*Need for project.* (up to 15 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers:

(i) The magnitude or severity of the problem to be addressed by the proposed project (up to 5 points);

(ii) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure (up to 5 points); and

(iii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals (up to 5 points).

(b) *Quality of the project design.* (up to 30 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 8 points);

(ii) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (up to 7 points);

(iii) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements; (up to 8 points); and

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate (up to 7 points).

(c) *Adequacy of resources.* (up to 15 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization and the relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project (up to 5 points);

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (up to 5 points); and

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support (up to 5 points).

(d) *Quality of project personnel.* (up to 20 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(3) In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (up to 5 points);

(ii) The qualifications, including relevant training and experience, of key project personnel (up to 5 points); and

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points).

(e) *Quality of the project evaluation.* (up to 20 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the project evaluation, the Secretary considers:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (up to 10 points); and

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcome (up to 10 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 75.217(d)(3), as required by 20 U.S.C. 1070–a23(d). The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process.

If there are insufficient funds for all applications with the same total scores, the Secretary will, to the extent practicable, consider the distribution of grant awards based on the geographic distribution of such grant awards and the distribution between urban and

rural applicants for the GEAR UP program consistent with 20 U.S.C. 1070a–22(a)(3). The first tiebreaker criterion will be to select for funding the tied applicant(s) representing the State(s) that has gone longest since being funded under the GEAR UP State program. If still tied, the second tiebreaker will be to fund—from the States still tied after implementing the first tiebreaker—the applicant from the State with the smallest amount of GEAR UP Partnership grant funding, per low-income student. If still tied, the third tiebreaker will be to fund the States with the highest percentage of individuals living in poverty.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The performance measures for the GEAR UP Program are established for Department reporting under 34 CFR 75.110. The objectives of the GEAR UP program are (1) to increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase education expectations for participating students and increase student and family knowledge of postsecondary education options, preparation, and financing.

The effectiveness of this program depends on the rate at which program participants complete high school and enroll in and complete a postsecondary education. We developed the following performance measures to track progress toward achieving the program's goals:

1. The percentage of GEAR UP students who pass Algebra 1 or its equivalent by the end of ninth grade.
2. The percentage of GEAR UP students who graduate from high school.
3. The percentage of GEAR UP students who complete the Free Application for Federal Student Aid.
4. The percentage of GEAR UP students and former GEAR UP students who are enrolled at an IHE.

In addition, to assess the efficiency of the program, we track the average cost, in Federal funds, of achieving a successful outcome, where success is defined as enrollment in a program of undergraduate instruction at an IHE of GEAR UP students immediately after high school graduation. These performance measures constitute GEAR UP's indicators of the success of the program. Accordingly, we require that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–11641 Filed 5–31–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0050]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Consolidation Loan Rebate Fee Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 3, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Consolidation Loan Rebate Fee Report.

OMB Control Number: 1845–0046.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 3,108.

Total Estimated Number of Annual Burden Hours: 3,367.

Abstract: The Department of Education is submitting for approval the Consolidation Loan Rebate Fee Report, ED Form 4–619. This request is for an extension of a currently approved collection. The information collected on the Consolidation Loan Rebate Fee Report will be used to document Federal Consolidation loans held by lenders who are responsible for sending interest payment rebate fees to the Secretary of Education.

Dated: May 25, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–11595 Filed 5–31–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634–095]

Great Lakes Hydro America, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Request for a temporary amendment of required reservoir elevation and flow releases.

b. *Project No.:* 2634–095.

c. *Dates Filed:* April 7, 2023.

d. *Applicant:* Great Lakes Hydro America, LLC.

e. *Name of Project:* Storage Project.

f. *Location:* The project is located on the South and West branches of the Penobscot River and its tributaries in Somerset and Piscataquis counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Bernier, Great Lakes Hydro America, LLC, 1024 Central Street, Millinocket, ME 04462, (207) 951–5006.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2634–095.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary amendment of its normal water level management and flow release requirements at the Seboomook development of its Storage Project. Beginning on September 1, 2023, the applicant intends to draw down the reservoir to an elevation 18 to 20 feet below the normal maximum elevation, exceeding the normal maximum drawdown limit of 17 feet. While drawing down the reservoir, the applicant would make releases that are greater than the normal release range of 750 to 1,250 cubic feet per second (cfs) during September 2023. Once the reservoir reaches the target drawdown elevation on or around October 2, 2023, the applicant would release inflow only and flow below the development may be lower or greater than normal required releases, which range between 250 and 400 cfs from October 15 through November 15. The project would resume normal operation in the winter of 2023/2024 and the drawdown is necessary to allow for repairs on the Seboomook dam.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions To Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: May 25, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–11644 Filed 5–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–482–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on May 17, 2023, Florida Gas Transmission Company, LLC (FGT), 1300 Main Street, Houston, Texas 77002, filed in the above

referenced docket, a prior notice request pursuant to sections 157.205, 157.208, 157.211, and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and FGT's blanket certificate issued in Docket No. CP82–553–000, for authorization to rearrange part of its proposed Fort Myers Lateral Relocation Project. All of the above facilities are located in Charlotte and Lee Counties, Florida. The project will allow FGT to abandon an approximate 1.45-mile segment of its existing 26-inch diameter Ft. Myers Lateral pipeline and appurtenant facilities and relocate and construct approximately 1.53 miles of replacement 26-inch diameter natural gas lateral pipeline and appurtenant facilities, to avoid conflicts with a Florida Department of Transportation (FDOT) planned road improvement project to State Road 31 (SR 31), and a planned expansion of property development. The estimated cost for the project is $15,600,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Blair Lichtenwalter, Senior Director, Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, P.O. Box 4967, Houston, Texas 77210–4967, at (713) 989–2605, or by email at *Blair.Lichtenwalter@energytransfer.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on July 24, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is July 24, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is July 24, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 24, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–482–000 in your submission.

(1) You may file your protest, motion to intervene, and comments 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 ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature,

Continued

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–482–000.

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 submissions (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 (with a link to the document) at: Blair Lichtenwalter, Senior Director, Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, P.O. Box 4967, Houston, Texas 77210–4967, or by email at *Blair.Lichtenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

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.

Dated: May 25, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–11643 Filed 5–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–169–000.
Applicants: Three Corners Solar, LLC.
Description: Three Corners Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/25/23.
Accession Number: 20230525–5030.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: EG23–170–000.
Applicants: Three Corners Prime Tenant, LLC.
Description: Three Corners Prime Tenant, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/25/23.
Accession Number: 20230525–5066.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: EG23–171–000.
Applicants: BE-Pine 1 LLC.
Description: BE-Pine 1 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/25/23.
Accession Number: 20230525–5128.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: EG23–172–000.
Applicants: Horus West Virginia I, LLC.
Description: Horus West Virginia I, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/25/23.
Accession Number: 20230525–5133.
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: EL23–71–000; ER18–194–005; ER18–195–005.
Applicants: American Electric Power Service Corporation, Southwest Power Pool, Inc., American Electric Power Service Corporation, Southwest Power Pool, Inc., East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., Golden Spread Electric Cooperative, Arkansas Electric Cooperative Corporation.
Description: Joint Formal Challenge and Complaint of *Arkansas Electric Cooperative Corporation, et al* v. *Public Service Company of Oklahoma, et al.*
Filed Date: 5/22/23.
Accession Number: 20230522–5226.
Comment Date: 5 p.m. ET 6/21/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2238–010; ER10–2237–010; ER10–2239–010; ER12–896–006; ER14–1818–025; ER16–748–004; ER19–1577–002.
Applicants: Kearny Mesa Storage, LLC, Sentinel Energy Center, LLC, Boston Energy Trading and Marketing LLC, Mariposa Energy, LLC, Larkspur Energy LLC, Wildflower Energy LP, Indigo Generation LLC.
Description: Triennial Market Power Analysis for Southwest Region of Indigo Generation LLC, et al.
Filed Date: 6/10/22.
Accession Number: 20220610–5191.
Comment Date: 5 p.m. ET 7/24/23.

Docket Numbers: ER22–233–004.
Applicants: Portland General Electric Company.
Description: Refund Report: PGE Transmission Rate Case Refund Report to be effective N/A.
Filed Date: 5/25/23.
Accession Number: 20230525–5060.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: ER22–2643–000.
Applicants: Three Corners Solar, LLC.
Description: Refund Report: Supplement to Refund Report to be effective N/A.
Filed Date: 5/25/23.
Accession Number: 20230525–5093.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: ER23–1524–001.
Applicants: Consumers Energy Company.
Description: Tariff Amendment: Corrected Revision to RS FERC No. 116 (ER23–1524–) to be effective 6/1/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5079.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: ER23–1619–001.
Applicants: Mesquite Solar 1, LLC.
Description: Tariff Amendment: Amendment to Assignment, Co-Tenancy and Shared Facilities Agreement Filing to be effective 4/13/2023.
Filed Date: 5/24/23.
Accession Number: 20230524–5249.
Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1939–001.
Applicants: Pike Solar LLC.
Description: Tariff Amendment: Amendment to Market-Based Rate Application to be effective 7/20/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5127.
Comment Date: 5 p.m. ET 6/15/23.

Docket Numbers: ER23–1960–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–05–24_SA 3989 METC–New Covert 1st Rev GIA to be effective 6/1/2023.
Filed Date: 5/24/23.
Accession Number: 20230524–5216.
Comment Date: 5 p.m. ET 6/14/23.
Docket Numbers: ER23–1961–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1166R40 Oklahoma Municipal Power Authority NITSA and NOA to be effective 8/1/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5026.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1962–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6908; Queue No. NQ–170 to be effective 4/28/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5028.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1963–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6906; Queue No. Z1–036 to be effective 7/25/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5057.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1964–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 1st Amend GIA & DSA Orange County Energy Storage 3 + eTariff Removal SA1037/1038 to be effective 7/25/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5061.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1965–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6910; Queue No. AB1–088 to be effective 7/25/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5072.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1966–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 1st Amend GIA & DSA Orange County Energy Storage 2 + eTariff Removal SA1039/1040 to be effective 7/25/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5091.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1967–000.
Applicants: Three Corners Prime Tenant, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 7/25/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5126.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1968–000.
Applicants: Energy Harbor Generation LLC.
Description: Tariff Amendment: Notice of Cancellation of Market Based Rate Tariff to be effective 6/1/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5137.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1969–000.
Applicants: Energy Harbor LLC.
Description: § 205(d) Rate Filing: Provisions in Reactive Power Rate Schedule for Sammis Facility to be effective 5/3/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5138.
Comment Date: 5 p.m. ET 6/15/23.
Docket Numbers: ER23–1970–000.
Applicants: Northern States Power Company, a Wisconsin corporation.
Description: § 205(d) Rate Filing: 2023–05–25 MISO NSPW CRS 171–NSPW to be effective 5/26/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5140.
Comment Date: 5 p.m. ET 6/15/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–44–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Amendment to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Golden Spread Electric Cooperative, Inc.
Filed Date: 5/25/23.
Accession Number: 20230525–5080.
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 25, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–11640 Filed 5–31–23; 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: RP23–784–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 5.25.23 Negotiated Rates—Direct Energy Business Marketing, LLC R–7465–09 to be effective 6/1/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5024.
Comment Date: 5 p.m. ET 6/6/23.
Docket Numbers: RP23–785–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 5.25.23 Negotiated Rates—Sequent Energy Management LLC R–3075–19 to be effective 6/1/2023.
Filed Date: 5/25/23.
Accession Number: 20230525–5025.
Comment Date: 5 p.m. ET 6/6/23.

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 25, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–11639 Filed 5–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 739–034]

Appalachian Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Revised Shoreline Management Plan (SMP).

b. *Project No:* 739–034.

c. *Date Filed:* November 15, 2022.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Claytor Hydroelectric Project.

f. *Location:* Claytor Lake on the New River in Pulaski County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Elizabeth Parcell, Appalachian Power Company, (540) 985–2441.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* June 26, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–739–034. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Request:* As a result of a required five-year review process, Appalachian Power Company filed a revised SMP for Claytor Lake. The revised SMP, developed in consultation with the various shoreline management stakeholders, proposes various editorial changes to the approved SMP as well as other minor changes to the shoreline classifications, including an appeals process, including a new Floating Enclosed Structure program, modifying certain requirements for shoreline uses (*e.g.,* distance between structures, roof coverage, and increasing allowable dock size), etc.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: May 25, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–11642 Filed 5–31–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10974–01–R5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permits for Premcor Refining Group, Inc., Premcor Alsip Distribution Center, and ExxonMobil Pipeline Company, Des Plaines Terminal, Cook County, Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on petition for objection to a Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated May 1, 2023, denying two petitions dated July 23, 2022 (the Premcor Petition) and November 14, 2022, (the ExxonMobil Petition), submitted by an anonymous petitioner, C23D32 (the Petitioner). The Petitions requested that EPA object to two Clean Air Act (CAA) title V operating permits issued by the Illinois Environmental Protection Agency (IEPA) to Premcor Refining Group's Alsip Distribution

Center (Premcor) and ExxonMobil Pipeline Company's Des Plaines Terminal (ExxonMobil), both located in Cook County, Illinois.

ADDRESSES: The final Order, the Petitions, and other supporting information are available for public inspection during normal business hours at the following address: 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 contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section before visiting the Region 5 office. Additionally, the final Order and Petitions are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

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

The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

On July 23, 2022, EPA received the Premcor Petition from the Petitioner requesting that EPA object to IEPA's July 11, 2022, modification of Premcor's operating permit no. 96030063. The Premcor Petition alleges that IEPA's issuance of the permit modification was unlawful because IEPA improperly processed a significant change to testing requirements in Premcor's permit as a minor modification. The Petitioner structured the Premcor Petition into the following five ''claims'': (1) IEPA relaxed testing requirements without public outreach, in violation of IEPA's environmental justice (EJ) practices and policies; (2) IEPA made changes to the permit based on a ''secretive template''; (3) the ''sheer amount of changes'' that IEPA appears to have made to the permit is enough to show a public comment period was warranted; (4) IEPA made changes to title I construction permits that should have been considered a significant change to the permit; and (5) the permit modification allows the facility to delay testing, which is a violation of human rights and will result in ''no testing ever being conducted'' and no ''demonstration of compliance.''

On November 14, 2022, EPA received the ExxonMobil Petition from the Petitioner requesting that EPA object to IEPA's July 11, 2022, modification of ExxonMobil's operating permit no. 95060060. Similar to the Premcor Petition, the ExxonMobil Petition alleges that IEPA improperly processed a significant change to testing requirements in ExxonMobil's title V permit as a minor modification. The Petitioner structured the ExxonMobil Petition into the following two ''claims'': (1) IEPA violated its EJ practices and policies by relaxing a ''critical air pollution control device test requirement'' without conducting public outreach and failed to give the public an opportunity to comment on the ''gross relaxation'' of testing at the terminal; and (2) IEPA deleted testing requirements in violation of human rights.

On May 1, 2023, the EPA Administrator issued an Order denying both Petitions. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review of the Administrator's May 1, 2023, Order shall be filed in the United States Court of Appeals for the appropriate circuit no later than July 31, 2023.

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

Dated: May 25, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–11635 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0374; FRL–10959–01–OCSPP]

DCPA Registration Review; Draft Occupational and Residential Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health occupational and residential risk assessment for the registration review of Dimethyl Tetrachloroterephthalate (DCPA) for the registered uses of DCPA and opens a public comment period on the assessment. The risk assessment is accompanied by several related documents, including an assessment of the benefits associated with the use of DCPA and a companion document to aid in interpretation of the risk assessment and provide an explanation of the approach being considered by EPA to address the potential risks.

DATES: Comments must be received on or before July 3, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0374, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: James Douglass, Chemical Review Manager, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2343; email address: *douglass.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the

Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, required by FIFRA section 3(g), 7 U.S.C. 136a(g), EPA must ensure that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. As part of the registration review process, the Agency has completed a draft occupational and residential risk assessment for the registered uses of DCPA. DCPA is an herbicide used to control grassy and broadleaf weeds on a variety of use sites including cole crops, onions, and turf. The Agency is taking the unusual step of publishing the DCPA occupational and residential risk assessment in advance of other pieces of the human health risk assessment and the ecological risk assessment because of newly submitted data on the toxicity of DCPA. These data, from a Comparative Thyroid Assay conducted in rats, suggest that there are potential risks for people exposed to DCPA during their work and leisure activities. The Agency anticipates that there is the potential for some pregnant workers to be exposed to levels of DCPA that are sufficient to cause thyroid hormone perturbations in the fetuses they are carrying. In order to determine the best path forward, the Agency is seeking comments on the draft occupational and residential risk assessment. The assessment is accompanied by several related documents, including an assessment of the benefits associated with the use of DCPA and a companion document to aid in interpretation of the risk assessment and to explain the approach being considered by EPA to address the potential risks. After reviewing comments received during the public comment period, EPA plans to respond to those comments and, if warranted, will issue a revised risk assessment. EPA encourages public input on all aspects of the assessment and mitigation of the potential occupational and residential risks for DCPA. The Agency will also keep the public advised on aspects related to risk mitigation as warranted.

III. Authority

EPA is conducting its registration review of DCPA pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.53(c), this notice announces the availability of EPA's draft human health occupational and residential risk assessment for the pesticide DCPA and opens a 30-day public comment period on the risk assessment. In order to expedite Agency action to address the risks posed by DCPA, the comment period will not be extended. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft risk assessment. After the close of the public comment period, EPA may, as needed, issue a revised occupational and residential risk assessment, explain any changes to the draft risk assessment, and respond to comments. Public comments received during the 30-day comment period will help inform the Agency's next steps. Unless any new information comes to light during this time that significantly changes the risk conclusions, the Agency is considering if cancellation of all DCPA product registrations is necessary.

Information Submission Requirements

Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English, and a written transcript must accompany any information submitted as an audio graphic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for DCPA will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 25, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–11664 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10983–01–OA]

Public Meeting of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the chartered Science Advisory Board. The purpose of the meeting is to discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions.

DATES: *Public Meeting:* The chartered Science Advisory Board will meet on Friday, June 23, 2023, from 12 noon to 5 p.m. Eastern Time.

Comments: See the section titled ''Procedures for Providing Public Input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory Board will hold a public meeting to discuss and deliberate on recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions.

Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. The SAB Work Group for Review of Science Supporting EPA Decisions (SAB SSD Work Group) is charged with identifying EPA planned actions that may warrant SAB review. The SAB will discuss recommendations received from the SAB SSD Work Group.

Availability of Meeting Materials: All meeting materials, including the agenda, will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above in the **FOR FURTHER INFORMATION CONTACT**, by June 19, 2023, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by June 19, 2023, for consideration at the June 23, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–11631 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10942–01–R6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Dow Beaumont Aniline Plant, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource

Conservation and Recovery Act, is granted to Dow Beaumont Texas Operations for two Class I hazardous waste injection wells at the Dow Beaumont Aniline Plant located in Nederland, Texas.

DATES: This action was effective as of May 9, 2023.

ADDRESSES: Copies of the petition reissuance and pertinent information relating thereto are on file at the following location: Environmental Protection Agency (EPA), Region 6, Water Division, Safe Drinking Water Branch (6WD–D), 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

FOR FURTHER INFORMATION CONTACT: Lauren Ray, Physical Scientist, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–2756.

SUPPLEMENTARY INFORMATION: As required by 40 CFR part 148, Dow adequately demonstrated to the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by the Dow Beaumont Aniline Plant, of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection Wells WDW–188 and WDW–391 until December 31, 2040, unless EPA terminates this exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice comment period started on January 26, 2023, and closed on March 13, 2023. No comments were received. EPA made inconsequential edits to the fact sheet after the public comment period. This decision constitutes final Agency action, and there is no Administrative appeal.

Dated: May 25, 2023.

Charles W. Maguire,

Director, Water Division, Region 6.

[FR Doc. 2023–11587 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10993–01–OA]

Public Meetings of the Science Advisory Board Hexavalent Chromium Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public meetings of the Science Advisory Board Hexavalent Chromium Review Panel. The purpose of the meetings is to review and discuss the panel's draft report of the EPA's draft IRIS Toxicological Review of Hexavalent Chromium.

DATES: *Public Meetings:* The Science Advisory Board Hexavalent Chromium Review Panel will meet on the following dates. All times listed are in Eastern Time.

1. July 19, 2023, from 12 noon to 5 p.m.

2. July 27, 2023, from 12 noon to 5 p.m.

Comments: See the section titled ''Procedures for Providing Public Input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meetings on July 19, 2023, and July 27, 2023, will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend each meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), via telephone (202) 564–2057, or email at *shallal.suhair@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board Hexavalent Chromium Review Panel will hold a virtual public meeting(s) to discuss the panel's draft report regarding the EPA's draft IRIS Toxicological Review of Hexavalent Chromium.

Availability of Meeting Materials: All meeting materials, including the agenda will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comments should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above in the **FOR FURTHER INFORMATION CONTACT**, by July 10, 2023, to be placed on the list of registered speakers for the July 19, 2023.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by July 10, 2023, for consideration at the July 19, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with

disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting(s), to give the EPA as much time as possible to process your request.

Meeting cancellation: The July 27, 2023, meeting date is tentative and may be canceled if the panel is able to complete its deliberations on July 19, 2023. If the July 27, 2023, meeting is canceled, notice will be posted on the SAB website.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–11633 Filed 5–31–23; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2023–0004]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP089479XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before June 26, 2023 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2023–0004 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2023–0004 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089479XX.

Purpose and Use:

Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to Turkiye.

Brief non-proprietary description of the anticipated use of the items being exported: To be used for passenger air transport between various European and surrounding countries.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Gunes Ekspres Havacilik, A.S. (''SunExpress'') Antalya, Turkiye.

Guarantor(s): not applicable.

Description of Items Being Exported: Boeing commercial jet aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *https://www.exim.gov/news/meeting-minutes*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–11706 Filed 5–31–23; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–208; FRS 144576]

Meeting of the Communications Equity and Diversity Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces the June 15, 2023, meeting of the Federal Communications Commission's (Commission) Communications Equity and Diversity Council (CEDC or Council).

DATES: Thursday, June 15, 2023, from 10 p.m. ET to 5 p.m. ET.

ADDRESSES: The CEDC meeting will be held in a hybrid manner, in person at FCC headquarters at 45 L Street NE, Washington, DC, as well as virtually available to the public for viewing via the internet at *http://www.fcc.gov/live.* While the CEDC's meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees are not required to have an appointment but must otherwise comply with protocols outlined at: *https://www.fcc.gov/visit.*

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer (DFO) of the CEDC, Media Bureau (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov;* or Diana Coho, Consumer Affairs and Outreach Specialist, Consumer and Governmental Affairs Bureau, at (202) 418–2848 or *Diana.Coho@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The agenda for the meeting will include final reports and recommendations from each of the three CEDC working groups including Innovation and Access, Digital Empowerment and Inclusion, and Diversity and Equity. The June 15, 2023, meeting is the closing meeting of the CEDC under its current charter, ending June 29, 2023. This agenda may be modified at the discretion of the CEDC Chair and the DFO.

The CEDC meeting will be accessible to the public on the internet via live feed from the Commission's web page at *www.fcc.gov/live.* Additionally, the public may follow the meeting on the Commission's YouTube page at *https://www.youtube.com/user/fccdotgovvideo.* The public may follow the event on Twitter@fcc or via the Commission's Facebook page at *www.facebook.com/fcc.*

Members of the public may submit questions during the meeting to *livequestions@fcc.gov.*

Additionally, members of the public may submit comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* File comments to the CEDC in GN Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' notice; last-minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2023–11709 Filed 5–31–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0176; –0184]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0176 and –0184).

DATES: Comments must be submitted on or before July 31, 2023.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* Reverse Mortgage Products.

OMB Number: 3064–0176.

Forms: None.

Affected Public: Insured state nonmember banks and state savings associations making reverse mortgage.

Burden Estimate:

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0176]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Reverse Mortgage Products—Implementation, 12 CFR 365 (Mandatory).	Recordkeeping	1	1	40:00	40
2. Reverse Mortgage Products—Ongoing, 12 CFR 365 (Mandatory).	Recordkeeping	30	1	08:00	240
Total Annual Burden (Hours)					280

Source: FDIC.

General Description of Collection: Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit). There is no change in the substance or methodology of this information collection.

2. *Title:* Volcker Rule Restrictions on Proprietary Trading and Relationships with Hedge Funds and Private Equity Funds.

OMB Number: 3064–0184.

Forms: None.

Affected Public: Private Sector; Insured state nonmember banks and state savings associations.

Burden Estimate:

TABLE 1—SUMMARY OF ESTIMATED IMPLEMENTATION/SET-UP ANNUAL BURDEN

[OMB No. 3064–0184]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Reporting (On occasion)	1	1	00:15	0
2. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Reporting (Quarterly)	1	1	125:00	125
3. Section 351.20(i)—Notice and Response (Voluntary)	Reporting (On occasion)	1	1	20:00	20
4. Section 351.3(d)(3)—Purchase and sale of securities in Accordance with liquidity management plans (Mandatory).	Recordkeeping (On occasion).	1	1	3:00	3
5. Section 351.4(b)(3)(i)(A)—Trading Desk Documentation (Mandatory).	Recordkeeping (On occasion).	1	1	2:00	2
6. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Recordkeeping (On occasion).	1	1	00:15	0
7. Section 351.5(c)—Hedging Instruments Documentation (Mandatory).	Recordkeeping (On occasion).	1	1	80:00	80
8. Section 351.10(c)(18)(ii)(C)(1)—Customer facilitation vehicles (Mandatory).	Recordkeeping (On occasion).	1	1	10:00	10
9. Section 351.11(a)(2)—Documentation on advisory or related services to customers (Mandatory).	Recordkeeping (On occasion).	1	1	10:00	10

TABLE 1—SUMMARY OF ESTIMATED IMPLEMENTATION/SET-UP ANNUAL BURDEN—Continued
[OMB No. 3064–0184]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
10. Section 351.20(b)—Compliance Program for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	795:00	795
11. Section 351.20(c)—CEO attestation for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (Annual) ...	1	1	300:00	300
12. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	10:00	10
13. Section 351.20(e)—Additional documentation for covered funds for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	200:00	200
14. Section 351.20(f)(1)—Simplified compliance program for Covered Banks with no trading assets or liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	8:00	8
15. Section 351.20(f)(2)—Simplified compliance program for Covered Banks with moderate trading assets and liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	100:00	100
16. Section 351.11(a)(8)(i)—Offerings disclosures (Mandatory)	Third-party Disclosure (On Occasion).	1	1	00:30	1
Estimated Implementation Annual Burden (Hours)	.....	.....	.....	.....	1,664

Source: FDIC.
Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

TABLE 2—SUMMARY OF ESTIMATED ONGOING ANNUAL BURDEN
[OMB No. 3064–0184]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Reporting (On occasion) ..	7	20	00:15	35
2. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Reporting (Quarterly)	2	4	41:00	328
3. Section 351.20(i)—Notice and Response (Voluntary)	Reporting (On occasion) ..	7	1	20:00	140
4. Section 351.3(d)(3)—Purchase and sale of securities in Accordance with liquidity management plans (Mandatory).	Recordkeeping (On occasion).	7	1	1:00	7
5. Section 351.4(b)(3)(i)(A)—Trading Desk Documentation (Mandatory).	Recordkeeping (On occasion).	7	4	2:00	56
6. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Recordkeeping (On occasion).	7	40	00:15	70
7. Section 351.5(c)—Hedging Instruments Documentation (Mandatory).	Recordkeeping (On occasion).	2	1	80:00	160
8. Section 351.10(c)(18)(ii)(C)(1)—Customer facilitation vehicles (Mandatory).	Recordkeeping (On occasion).	7	1	10:00	70
9. Section 351.11(a)(2)—Documentation on advisory or related services to customers (Mandatory).	Recordkeeping (On occasion).	7	1	10:00	70
10. Section 351.20(b)—Compliance Program for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	2	1	265:00	530
11. Section 351.20(c)—CEO attestation for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (Annual) ...	2	1	100:00	200
12. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	2	1	10:00	20
13. Section 351.20(e)—Additional documentation for covered funds for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	2	1	200:00	400
14. Section 351.20(f)(1)—Simplified compliance program for Covered Banks with no trading assets or liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	8:00	8
15. Section 351.20(f)(2)—Simplified compliance program for Covered Banks with moderate trading assets and liabilities (Mandatory).	Recordkeeping (On occasion).	5	1	40:00	200
16. Section 351.11(a)(8)(i)—Offerings disclosures (Mandatory)	Third-party Disclosure (On Occasion).	7	26	00:30	91
Estimated Ongoing Annual Burden (Hours)	.....	.....	.....	.....	2,385

Source: FDIC.
Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

OMB No. 3064–0184 Total Estimated Annual Burden (Hours): 4,049.

General Description of Collection: Section 13 of the Bank Holding Company Act of 1956 (''Section 13'') contains certain restrictions on the ability of a banking entity to engage in proprietary trading and to have certain interests in, or relationships with, a hedge fund or private equity fund. The FDIC's regulations at 12 CFR part 351 (part 351) implement Section 13 with respect to FDIC-supervised insured depository institutions (IDIs). The requirements in part 351 do not apply to FDIC-supervised IDIs that have, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, that are 5 percent or less of total consolidated assets.[1] Part 351 contains provisions that constitute information collections (ICs) under the Paperwork Reduction Act corresponding to policies, rules, and regulations regarding periodic reporting requirements, documentation of trading activities and compliance programs, and various other recordkeeping and disclosure requirements for FDIC-supervised IDIs that are subject to the requirements of part 351 (covered bank).

There is no change in the substance or methodology of this information collection. The estimated annual burden for this information collection is 4,049 hours. This is an increase of 856 hours from the total estimated annual burden of 3,193 hours submitted in 2020. As was the case in the 2020, the FDIC assumes that all covered banks have completed the implementation portions of this information collection. Thus, the current estimated annual implementation burden is identical to the estimated annual implementation burden in 2020 (1,664 hours).

The increase in burden is driven entirely by the increase in the total annual ongoing burden which is now estimated to be 2,385 hours, an increase of 856 hours from the estimated annual burden used in 2020 (1,529 hours). Specifically, the number of covered banks considered to have ''significant'' trading assets and liabilities has increased from one in 2020 to two in the current estimate . . . Generally, the ICs that apply only to these covered banks—such as those under § 351.20(a)—351.20(e)—have the highest estimated time per response and an increase in the number of respondents will lead to a correspondingly large increase in the total estimated annual burden. This increase is attenuated by a decrease in the total number of covered banks with ''moderate'' or ''significant'' trading assets and liabilities from ten in the 2020 ICR to seven in this ICR, which has led to a corresponding decrease in the total estimated annual burden for those line items that apply to all covered banks with ''moderate'' or ''significant'' trading assets and liabilities. The total estimated annual hourly burden for both implementation and ongoing compliance is shown in Tables 1 and 2 above

[1] 12 CFR 351.2(r)(2).

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on May 25, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–11603 Filed 5–31–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012276–003.

Agreement Name: Hapag-Lloyd/Zim Mediterranean Slot Exchange Agreement.

Parties: Hapag Lloyd AG; ZIM Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Amendment adds Portugal to the geographic scope of the Agreement and changes the amount of space being exchanged under the Agreement.

Proposed Effective Date: 7/3/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/135.

Agreement No.: 201218–001.

Agreement Name: Bi-State Public Marine Terminal Discussion Agreement.

Parties: Georgia Ports Authority; South Carolina State Ports Authority.

Filing Party: Paul Heylman, Saul Ewing LLP.

Synopsis: The amendment removes rate discussion authority from the Agreement.

Proposed Effective Date: 7/3/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/2089.

Agreement No.: 201256–002.

Agreement Name: Maersk/MSC Gulf-ECSA Vessel Sharing Agreement.

Parties: Maersk A/S; Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Amendment revises the number of vessels to be provided by one of the parties, revises the space allocated to the parties, and changes the contact person for Maersk.

Proposed Effective Date: 7/8/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/12179.

Dated: May 26, 2023.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2023–11651 Filed 5–31–23; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel

(SEP) meeting on ''Diagnostic Safety in Ambulatory Care.'' This SEP meeting will be closed to the public.

DATES: July 26–27, 2023.

ADDRESSES: Agency for Healthcare Research and Quality (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in a particular review meeting which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. 1009(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''Diagnostic Safety in Ambulatory Care'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 26, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–11656 Filed 5–31–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7071–N]

Announcement of the Advisory Panel on Outreach and Education (APOE) Virtual Meeting

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

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES:

Meeting Date: Thursday, June 22, 2023 from 12 p.m. to 5:00 p.m. eastern daylight time (e.d.t).

Deadline for Meeting Registration, Presentations, Special Accommodations, and Comments: Thursday, June 15, 2023 5:00 p.m. (e.d.t).

ADDRESSES:

Meeting Location: Virtual. All those who RSVP will receive the link to attend.

Presentations and Written Comments: Presentations and written comments should be submitted to: Walt Gutowski, Jill Darling, Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Registration: Persons wishing to attend this meeting must register at the website *https://CMS-APOE-June2023.rsvpify.com* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Walt Gutowski, Jill Darling or Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Panel, which was first chartered in 1999, advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (the Department) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare, Medicaid, Children's Health Insurance Program (CHIP) and Health Insurance Marketplace outreach and education programs.

The APOE has focused on a variety of laws, including the Medicare Modernization Act of 2003 (Pub. L. 108–173), and the Affordable Care Act (Patient Protection and Affordable Care Act, (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)).

The APOE helps the Department determine the best communication channels and tactics for various programs and priorities, as well as new rules and legislation. In the coming years, we anticipate the American Rescue Plan, the Inflation Reduction Act, and the SUPPORT Act will be some of the topics the Panel will discuss. The Panel will provide feedback to CMS staff on outreach and education strategies, communication tools and messages and how to best reach minority, vulnerable and Limited English Proficiency populations.

B. Charter Renewal

The Panel's charter was renewed on January 19, 2023, and will terminate on January 19, 2025, unless renewed by appropriate action. The Charter can be found at *https://www.cms.gov/regulations-and-guidance/guidance/faca/apoe.*

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace® education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of April 20, 2023, are as follows:

- Julie Carter, Council for Federal Policy, Medicare Rights Center.
- Scott Ferguson, Psychotherapist, Scott Ferguson Psychotherapy.
- Jean-Venable Robertson Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University.
- Ted Henson, Director of Health Center Performance and Innovation, National Association of Community Health Centers.
- Joan Ilardo, Director of Research Initiatives, Michigan State University, College of Human Medicine.
- Lydia Isaac, Vice President for Health Equity and Policy, National Urban League.
- Daisy Kim, Principal Legislative Analyst, University of California System.
- Cheri Lattimer, Executive Director, National Transitions of Care Coalition.
- Erin Loubier, Senior Director for Health and Legal Integration and Payment Innovation, Whitman-Walker Health
- Cori McMahon, Behavioral Medicine Psychologist and Digital Health Clinical Leader, Cooper University Health Care.
- Alan Meade, Director of Rehabilitation Services, Holston Medical Group.
- Neil Meltzer, President and CEO, LifeBridge Health.
- Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated.
- Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska.
- Morgan Reed, Executive Director, Association for Competitive Technology.
- Carrie Rogers, Associate Director, Community Catalyst.
- Margot Savoy, Senior Vice President, American Academy of Family Physicians.
- Congresswoman Allyson Schwartz, Senior Advisor, FTI Consulting.
- Matthew Snider, JD, Senior Policy Analyst, Unidos US.
- Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

II. Meeting Format and Agenda

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the June 22, 2023 meeting will include the following:

- Welcome and opening remarks from CMS leadership
- Recap of the previous (April 20, 2023) meeting
- Presentations on CMS programs, initiatives, and priorities; discussion of panel recommendations
- An opportunity for public comment
- Meeting adjourned

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Meeting Participation

The meeting is open to the public, but attendance is limited to registered participants. Persons wishing to attend this meeting must register at the following weblink *https://CMS-APOE-June2023.rsvpify.com* or by contacting the DFO at the address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held virtually. Individuals who are not registered in advance will be unavailable to attend the meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: May 26, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–11679 Filed 5–31–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10221]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Independent Diagnostic Testing Facilities (IDTFs) Site Investigation Collection; *Use:* The purpose of the site investigation is to ensure that the IDTF is in compliance with the provisions of 42 CFR 410.33, as well as all other applicable Federal, State and local laws and regulations. It is also used to verify the information the IDTF furnished on its CMS–855B enrollment application. Sections 1814(a), 1815(a), and 1833(e) of the Act require the submission of information necessary to determine the amounts due to a provider or other person. To fulfill this requirement, CMS must collect information on any IDTF supplier who submits a claim to Medicare or who applies for a Medicare billing number before allowing the IDTF to enroll. This information must, minimally, clearly identify the provider and its' place of business as required by CFR 424.500 (Requirements for Establishing and Maintaining Medicare Billing Privileges) and provide all necessary documentation to show they are qualified to perform the services for which they are billing. The site inspection form allows inspectors to verify the information using a standardized information collection methodology. *Form Number:* CMS–10221 (OMB control number: 0938–1029); *Frequency:* Occasionally; *Affected Public Sector:* Private Sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 652; *Total Annual Responses:* 652; *Total Annual Hours:* 1,304. (For policy questions regarding this collection contact Alisha Sanders at 410–786–0671).

Dated: May 26, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–11662 Filed 5–31–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Medical Health Assessment Form and Public Health Investigation Forms, Tuberculosis and Non-Tuberculosis Illness (Office of Management and Budget 0970–0509)

AGENCY: Office of Refugee Resettlement, 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) is requesting a 3-year extension of the Mental Health Assessment Form (formerly the Health Assessment Form) and Public Health Investigation Forms, Active Tuberculosis (TB) and Non-TB Illness (Office of Management and Budget (OMB) #0970–0509, expiration December 31, 2023. Changes are proposed to the currently approved 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: The ACF Office of Refugee Resettlement (ORR) places unaccompanied children in their custody in care provider facilities until unification with a qualified sponsor. Care provider facilities are required to provide children with mental health services and health care. Children meet with onsite mental health counselors on a regular basis. If a child is identified as potentially having a more serious mental health condition, they are referred to a psychiatrist, psychiatric nurse practitioner or physician's assistant, licensed psychologist, or any other community-based licensed mental health provider (*e.g.,* social worker).

The Mental Health Assessment form is to be used as a worksheet for mental health specialists to compile information that would otherwise have been collected during the evaluation. Once completed, the form will be given to care provider program staff for data

entry into ORR's secure, electronic data repository. Data will be used to monitor the health of unaccompanied children while in ORR care and for case management of any identified conditions.

Children may be exposed to nationally reportable infectious diseases during the journey to the U.S., while in the custody of the Customs and Border Protection after crossing the border, or during their stay in ORR custody. Public health interventions such as quarantine, vaccination or lab testing may be initiated to reduce possible disease transmission. Following an exposure, children will be assessed onsite by care provider program staff and if found to be symptomatic, referred to a healthcare provider for evaluation.

The Public Health Investigation Forms are to be used as worksheets by care provide program staff to record their findings when an exposure has been reported. Once completed, they will enter the data into ORR's secure data repository. Data will be used to track disease transmission and health outcomes of children in ORR care.

ORR has repurposed the former Health Assessment Form from a medical and mental health information collection to a mental health collection only, and renamed it the Mental Health Assessment Form. ORR has incorporated other changes to the forms to streamline the flow of data collection, clarify the intent of certain fields, improve data quality, and ensure alignment with ORR program guidance. In addition, ORR has written instructional letters for the Medical Health Assessment Form to explain the purpose of the forms and provide general guidance on completion to healthcare providers.

Respondents: Mental health professionals (psychiatrists, psychiatric nurse practitioners or physician's assistants, licensed psychologist or any other community based licensed mental health provider (*e.g.,* social worker)), care provider program staff.

Annual Burden Estimates:

ESTIMATED OPPORTUNITY TIME FOR RESPONDENTS

Instrument	Respondent	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Mental Health Assessment Form.	Mental health professionals	500	6.8	0.18	1,836	612
Public Health Investigation Form: Active TB.	Care provider program staff	500	1	0.08	1,200	400
Public Health Investigation Form: Non-TB Illness.	.....	500	200	0.08	24,000	8,000
Estimated Total Annual Burden Hours.	.....	.....	.....	.....	.....	9,012

ESTIMATED RECORDKEEPING TIME

Instrument	Respondent	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Mental Health Assessment Form.	Care provider program staff	500	6.8	0.21	2,142	714
Public Health Investigation Form: Active TB.		500	1	0.08	1200	400
Public Health Investigation Form: Non-TB Illness.		500	200	0.08	24,000	8,000
Estimated Total Annual Burden Hours.	.....	.....	.....	.....	.....	9,114

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: 6 U.S.C. 279: Exhibit 1, part A.2 of the Flores Settlement Agreement (*Jenny Lisette Flores, et al.,* v. *Janet Reno, Attorney General of the United States, et al.,* Case No. CV 85–4544–RJK [C.D. Cal. 1996])

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–11627 Filed 5–31–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Office of Refugee Resettlement Annual Survey of Refugees (Office of Management and Budget #0970–0033)

AGENCY: Office of Refugee Resettlement, 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) within the U.S. Department of Health and Human Services seeks an update to the existing data collection for the Annual Survey of Refugees. The Annual Survey of Refugees is a yearly sample survey of refugee households entering the U.S. in the previous 5 fiscal years. The requested update is based upon results of a multi-year effort in instrument redesign and field testing. ACF estimates the proposed changes will increase response burden from 48 to 50 minutes per respondent.

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: Data from the Annual Survey of Refugees are used to meet the Office of Refugee Resettlement's (ORR) Congressional reporting requirements, as set forth in the Refugee Act of 1980 (section 413(a) of the Immigration and Nationality Act). ORR makes survey findings available to the general public and uses findings for the purposes of program planning, policy-making, and budgeting. The requested update reflects changes to the survey instrument to: enhance ORR's understanding of refugees' resettlement experiences; streamline the collection of household-level information; and improve data reliability and validity.

Respondents: The Annual Survey of Refugees secures a nationally representative sample of refugee households arriving in the U.S. in the previous 5 fiscal years.

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
Introduction Letter and Postcard	4,500	1	.05	225	75
ORR–9 Annual Survey of Refugees	4,500	1	.80	3,600	1,200
Estimated Total Annual Burden Hours					1,275

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: Sec. 413. [8 U.S.C. 1523]

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–11629 Filed 5–31–23; 8:45 am]

BILLING CODE 4184–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment; National Human Trafficking Prevention Framework

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: This notice informs the public of the opportunity to provide input on the U.S. Department of Health and Human Services' (HHS) National Human Trafficking Prevention Framework (Framework), which contains strategies and approaches to prevent human trafficking and its recurrence while increasing capacity to identify and reduce harm caused by human trafficking. HHS will consider this input as it updates the Framework. The draft Framework is available at *https://www.acf.hhs.gov/otip.*

DATES: Submissions must be received by 5 p.m. EDT on June 9, 2023.

ADDRESSES: Please submit all responses via email to *EndTrafficking@acf.hhs.gov* with ''Public Comment: Prevention Framework'' in the subject. Submissions can include attachments of or links to any supporting documentation. Please provide your contact information for possible follow-up from the Office on Trafficking in Persons.

FOR FURTHER INFORMATION CONTACT: Kimberly Casey, Communications and Prevention Specialist, Office on Trafficking in Persons, Email: *Kimberly.Casey@acf.hhs.gov,* Phone: 202–594–7026.

SUPPLEMENTARY INFORMATION:

Background

The International Labor Organization estimates 27.6 million people were experiencing forced labor and/or commercial sexual exploitation globally on any given day in 2021. The global prevalence of human trafficking increased from 3.4 to 3.5 per thousand people between 2016 and 2021, driven entirely by the private economy. Although there is still no rigorous prevalence estimate of human trafficking within the United States, cases of human trafficking have been reported in all 50 states and the District of Columbia, on tribal land, and within U.S. territories.

Human trafficking is a public health issue and crime with adverse physical and mental health, developmental, financial, and social effects, which often reach beyond the individual directly impacted to affect families, communities, industries, and society at large. In response to the U.S. Government's recognition that human trafficking is both a transnational and national issue of significant concern, the Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent reauthorizations created a three-pronged (''3P'') federal framework to address human trafficking—prevention, protection, and prosecution. A fourth ''P''—for partnership—serves as a complementary means to achieve progress across the 3Ps and engage multiple sectors of society in the work

to address human trafficking. Steady progress has been made since the TVPA was first authorized; however, efforts to assemble a focused array of prevention strategies addressing both victimization and perpetration, while essential, are largely absent.

Establishing the Prevention Framework

HHS plays a critical role in the U.S. Government's efforts to prevent and respond to human trafficking. The HHS Task Force to Prevent Human Trafficking, comprised of 21 divisions and offices across HHS, helps implement HHS's priority actions in the National Action Plan to Combat Human Trafficking and related national strategies. The Framework contributes to the implementation of National Action Plan Priority Action 1.1.2 to increase the scale and quality of human trafficking prevention efforts utilizing a collective impact strategy.

The Framework is informed by a public health approach to violence prevention, recognizing human trafficking is not an isolated incident but a widespread issue impacting the health and well-being of individuals, families, and communities across generations. Human trafficking is a dynamic form of violence, shifting and adapting as traffickers refine recruitment schemes, methods of control, and modes of exploitation. As understanding and knowledge of human trafficking grow, strategies to address it must evolve as well. Treating human trafficking as a public health concern grants a renewed sense of urgency and fundamentally alters how collaborators prevent and respond to it.

A public health approach to human trafficking is proactive rather than reactionary, moving upstream to identify prevention measures that, combined with downstream interventions, can decrease the number of people who experience trafficking. Focusing on three levels of prevention—primary, secondary, and tertiary—a public health approach seeks to stop human trafficking before it occurs, reduce its impact or duration, mitigate lasting effects, and prevent it from recurring.

The Framework harnesses established concepts of violence prevention to strengthen efforts to prevent human trafficking, outlining strategies and approaches that diverse sectors of society can use to prevent human trafficking and its recurrence while increasing their capacity to identify and reduce harm caused by human trafficking. The Framework encourages collaboration, coordination, and integration to enhance human trafficking prevention, inviting partnerships with federal, state, tribal, territorial, and local governments; business, industry, and other private sector entities; nonprofits and non-governmental organizations; educational institutions; and philanthropic, faith-based, and research organizations; and more. Through this collective effort, HHS and its partners will be prepared to test and scale solutions that will prevent human trafficking and improve the lives of people affected by human trafficking across the United States.

Comments: HHS is seeking public feedback on the Framework, including comments on understandability and suggested changes. HHS will use comments to make updates to the Framework as needed.

Dated: May 25, 2023.

Linda Hitt,

Executive Secretariat.

[FR Doc. 2023–11605 Filed 5–31–23; 8:45 am]

BILLING CODE 4184–48–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Administration for Children and Families Generic for Information Collections Related to Gatherings (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, 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) at the U.S. Department of Health and Human Services intends to request approval from the Office of Management and Budget (OMB) for a generic clearance to request information from potential participants at ACF gatherings, such as meetings or conferences. The planning for these gatherings is most often on a quick timeline and the standard timeline to comply with a full request under the Paperwork Reduction Act (PRA) would inhibit the ability to collect information to inform these activities. Therefore, an umbrella generic is requested to allow for quick turnaround requests for similar information collections related to these activities.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the PRA, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF hosts a variety of gatherings for many different purposes. This may include large scale conferences, meetings for grantees or contractors, workshops, trainings, poster sessions, and other in-person and virtual gatherings for individuals with interest in ACF programs (clients, researchers, policymakers, etc.), among others. To ensure ACF has adequate information to plan these activities, the Agency must often collect information from potential participants such as basic contact information, preferences for attendance (mode, special requests, etc.), organizational affiliation, feedback about meeting content, etc. Additionally, some activities require ACF to have additional information to have the means to select the most appropriate participants for attendance according to the type or purpose of a given activity, or to group participants into the most appropriate category or activity during an event. This may include information about poster presentations, speaking panels, training courses, professional perspectives, or experiences, etc. In addition, attendees may be asked to submit an application or abstract for prescreening to be selected for attendance.

The purposes of the collections under this umbrella generic information collection are to gather appropriate information to plan ACF gatherings. Example information collection activities could include:

- Registration forms:
  - Information collected on these types of forms could include name, contact information, organization/affiliation, basic demographics, attendance needs, etc.
- Applications for panels, posters, or other presentation formats:
  - Information collected on these types of applications could include title, author(s), institution/organization, abstract describing presentation or poster, instructions, etc.
- Pre-meeting surveys:
  - Information collected on these types of surveys could include content preferences, scheduling needs and preferences, pre-meeting knowledge, etc.
- Post-Meeting/-Workshop/-Training Evaluation Surveys:

○ Information collected on these types of surveys could include requests for feedback on the overall activity, feedback on content, post-meeting knowledge, post-meeting uses of content, preferences for future activities, etc.

As part of this generic, ACF requests OMB provide a response on individual generic information collections within 5 business days.

Note that this generic is primarily for information collected in connection with closed ACF meetings, as information collected in connection with public ACF meetings are not considered ''information'' under PRA per 44 U.S.C., 5 CFR Ch. 11 (1–1–99 Edition), 1320.3: Definitions.

Respondents: Potential respondents may include researchers, individuals with expertise in ACF program areas, individuals with interest in ACF program areas, those receiving ACF services, ACF grantees or contractors, among others with involvement or interest in ACF activities.

TOTAL BURDEN ESTIMATES

Example types of information collections	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Average hourly wage	Total annual cost
Registration Forms	30,000	1	.167	5010	$64	$320,640
Applications	5000	1	1.5	7500	64	480,000
Pre- and Post-activity Surveys	20,000	1	.5	10000	64	640,000
Other Activities	14,000	1	.5	7000	64	448,000
Estimated Totals	69,000		.428 (average)	29,510		1,888,640

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.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–11571 Filed 5–31–23; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Medical Assessment Form and Dental Assessment Form (Office of Management and Budget 0970–0466)

AGENCY: Office of Refugee Resettlement, 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) is requesting a 3-year extension of the forms Medical Assessment Form (formerly, the Initial Medical Exam (IME) Form and Supplemental Tuberculosis (TB) Screening Form) and Dental Assessment Form (formerly, the Dental Exam Form) (Office of Management and Budget (OMB) #0970–0466, expiration December 31, 2023). Changes are proposed to the currently approved 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: The ACF Office of Refugee Resettlement (ORR) places unaccompanied children in their custody in care provider facilities until unification with a qualified sponsor. Care provider facilities are required to provide children with services such as mental health services and health care. Each child must receive an IME within 2 business days of admission to an ORR care provider program or temporary influx care facility. The IME satisfies *Flores* requirements which require a ''complete medical examination, including a screening for infectious disease. The purposes of the IME are to assess general health, administer vaccinations in keeping with U.S. standards (also required by *Flores*), identify health conditions that require further attention, and detect contagious diseases of public health importance, such as influenza or TB. The IME is performed by a licensed health care provider and comprised of a complete medical history and physical exam, risk, and age-based laboratory screenings, TB screenings and immunizations. In addition, children may be referred to a medical specialist by their healthcare provider for acute or chronic conditions that require additional evaluation. Children who are in ORR care for an extended length of time may require routine well-child evaluations.

The forms are to be used as worksheets for generalist healthcare providers and pediatric and other medical specialty healthcare providers to compile information that would otherwise have been collected during the health evaluation. Once completed, the forms will be given to care provider program staff for data entry into ORR's secure, electronic data repository. Data will be used to monitor the health of unaccompanied children while in ORR care, for case management of any identified illnesses/conditions and ensure care provider program compliance with ORR requirements.

ORR has merged the former IME Form and Supplemental TB Screening Form into one form, the Medical Assessment Form which will be used during all medical evaluations with a mid-level or higher medical professional. ORR has incorporated other changes to the forms to streamline the flow of data collection, clarify the intent of certain fields, improve data quality, and ensure alignment with ORR program guidance. In addition, ORR has written instructional letters for the Medical Assessment Form and Dental Assessment Form to explain the

purpose of the forms and provide general guidance on completion.

Respondents: Healthcare providers (pediatricians, medical specialists, and dentists), Care Provider Program Staff

Annual Burden Estimates

ESTIMATED OPPORTUNITY TIME FOR RESPONDENTS

Instrument	Respondent	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Medical Assessment Form	Pediatricians, General	300	840	0.22	166,320	55,440
	Medical specialist, General	750	22	0.22	10,890	3,630
Dental Assessment Form ...	Dentists	250	64	0.12	5,760	1,920

Estimated Total Annual Burden Hours: 60,990.

ESTIMATED RECORDKEEPING TIME

Instrument	Respondent	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Medical Assessment Form completed by a medical professional.	Care Provider Program Staff.	500	537	0.33	265,815	88,605
Medical Assessment form not completed by a medical professional (information obtained via health records).		500	100	0.17	25,500	8,500
Dental Assessment Form ...		500	32	0.17	8,160	2,720

Estimated Total Annual Burden Hours: 99,825.

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: 6 U.S.C. 279: Exhibit 1, part A.2 of the Flores Settlement Agreement (*Jenny Lisette Flores, et al.,* v. *Janet Reno, Attorney General of the United States, et al.,* Case No. CV 85–4544–RJK [C.D. Cal. 1996])

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–11626 Filed 5–31–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Strengthening Child Welfare Systems To Achieve Expected Child and Family Outcomes Cross-Site Evaluation (New Collection)

AGENCY: Children's Bureau, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Children's Bureau, Administration for Children and Families (ACF), Department of Health and Human Services, is proposing to collect data for a new process and outcome study, Strengthening Child Welfare Systems to Achieve Expected Child and Family Outcomes (SCWS).

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: The SCWS study will collect information to understand (1) implementation processes and the impact of grant interventions and (2) examine whether and the degree to which grant recipients were able to address common Child and Family Services Reviews (CFSR) outcomes. Proposed data sources for this effort include one survey and one focus group. The survey will gather information to understand the factors that supported or hindered implementation, as well as assess collaboration efforts and the intended impact of grant interventions. The focus groups will gather information to understand implementation of SCWS strategies and interventions, successes and challenges, and the perceived effect of the strategies on short and long-term child welfare outcomes, with specific attention to CFSR outcomes related to permanency.

Respondents: Respondents will include grant recipient staff, evaluators, and community partners.

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
SCWS web-based survey	60	1	0.5	30	10
SCWS focus group	30	1	1.5	45	15

Estimated Total Annual Burden Hours: 25.

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: Statutory Authority Title II, Section 203(b)(4) of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113(b)(4)).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–11634 Filed 5–31–23; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0742]

Human Cells, Tissues, and Cellular and Tissue-Based Product Establishments That Are Improperly Registered in the Electronic Human Cell and Tissue Establishment Registration System Due to Lack of Annual Registration Update; Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to begin inactivating the registration of establishments that manufacture human cells, tissues, or cellular or tissue-based products (HCT/Ps) that have not updated their registration during the annual update period, in accordance with FDA regulations, in the electronic human cell and tissue establishment registration system (eHCTERS). FDA regulations require establishments that manufacture certain HCT/Ps to update their establishment registration annually. These regulations also require establishments to amend their registration within 30 calendar days of certain changes.

DATES: This notice is applicable August 30, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew C. Harvan, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

HCT/Ps are defined in § 1271.3(d) (21 CFR 1271.3(d)) as articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. FDA has a tiered, risk-based approach to the regulation of HCT/Ps. If all of the criteria in 21 CFR 1271.10(a) are met, and none of the exceptions in § 1271.15 (21 CFR 1271.15) apply, then the HCT/P is regulated solely under section 361 of the PHS Act (42 U.S.C. 264) and the regulations in part 1271 (21 CFR part 1271) (361 HCT/P), and FDA's premarket review and approval are not required.

Establishments that manufacture 361 HCT/Ps are required to register and list their HCT/Ps with FDA's Center for Biologics Evaluation and Research (CBER) using the electronic registration and listing system (§§ 1271.1(b), 1271.21, and 1271.22 (21 CFR 1271.1(b), 1271.21, and 1271.22)).[1] [2] Under § 1271.3(b), establishment ''means a place of business under one management, at one general physical location, that engages in the manufacture of [HCT/Ps].'' This includes ''any individual, partnership, corporation, association, or other legal entity engaged in the manufacture of [HCT/Ps] . . . [and includes] [f]acilities that engage in contract manufacturing services . . . .'' Under § 1271.3(e), ''manufacture means, but is not limited to, any or all steps in the recovery, processing, storage, labeling, packaging, or distribution of any human cell or tissue, and the screening or testing of the cell or tissue donor.''

Pursuant to § 1271.21, establishments that manufacture 361 HCT/Ps must register with FDA and submit a list of every HCT/P that they manufacture within 5 days after beginning operations. Establishments are required to update their registration annually each December. Establishments are also required to update their HCT/P list when changes occur. Such new information must be submitted at the time of change, or each June or December, whichever month occurs first. An establishment may accomplish its required annual registration update in conjunction with updating its HCT/P list.

In addition, under 21 CFR 1271.26, if the ownership or location of the

[1] An establishment that meets any of the exceptions in § 1271.15 is not required to register or comply with other requirements in part 1271.

[2] Manufacturers of HCT/Ps that are regulated as drugs, devices, and/or biological products under section 351 of the PHS Act (42 U.S.C. 262) and/or the Federal Food, Drug, and Cosmetic Act and applicable regulations, must register and list their products in accordance with part 207 or part 807 (21 CFR part 207 or part 807), as applicable (§ 1271.1(b)(2)). FDA does not require establishments that manufacture HCT/Ps regulated as drugs, devices, and/or biological products that are only for use in research under an investigational new drug application (IND) (21 CFR part 312) or an investigational device exemption (IDE) (21 CFR part 812) to register and list those HCT/Ps in accordance with part 207 or part 807 if they do not engage in other activities that would require them to register (21 CFR 207.13(e), 807.65(f), and 812.1).

establishment changes or if there is a change in the establishment's U.S. agent's name, address, telephone number, or email address, then establishments must also amend their registration within 30 calendar days. Of note, the regulations make clear that FDA's ''acceptance of an establishment registration and HCT/P listing form does not constitute a determination that an establishment is in compliance with applicable rules and regulations or that the HCT/P is licensed or approved by FDA'' (21 CFR 1271.27(b)).

Registration is performed using CBER's eHCTERS. Establishments electronically submit required registration and HCT/P listing information, as well as updates to such information, through their eHCTERS account.[3] The public can access eHCTERS to search and review tissue establishment registration information (registered, inactive, and pre-registered establishments) through the eHCTERS Public Query Application.

Complete, accurate, and up-to-date establishment registration and HCT/P listing information is essential to FDA's mission. If registration and listing information is outdated or otherwise unreliable, the integrity of the HCT/P registration and listing database is compromised. Registration information assists FDA in identifying industry participants and the scope of HCT/Ps manufactured. This assists FDA in more efficiently monitoring industry and providing new information including guidances, policies, and requirements. Establishment registration information also assists FDA in reacting swiftly to newly discovered or understood risks by enabling FDA to quickly alert industry of our concerns and, when appropriate, to conduct establishment inspections. Without this information, FDA would not be able to effectively monitor compliance under FDA's risk-based surveillance inspection program.

Establishment registration and HCT/P listing information is also widely used outside of FDA for various purposes. The public uses the Public Query Application of eHCTERS to search for and locate HCT/P establishments. For example, certain voluntary healthcare accreditation organizations require hospitals or surgical centers to annually confirm that their tissue suppliers are registered with FDA. Therefore, inclusion of inaccurate or outdated information in eHCTERS can negatively affect public health.

II. Circumstances Under Which HCT/P Registration and Listing Information Becomes Inaccurate or Outdated

Establishments that manufacture HCT/Ps are required to update their registration annually in December, even if there are no changes or updates to their information (§ 1271.21). Every year, many HCT/P establishments fail to update their registration information during the annual update period. In recent years, 390 of 2671, 379 of 2361, and 319 of 2431 registered domestic and foreign establishments failed to submit their annual registration for 2019, 2020, and 2021, respectively. Some of the establishments have not submitted their annual update for more than 2 years.

After the annual registration period ends, CBER generates a list of establishments that have failed to submit their annual registration update. From this list, FDA attempts to follow up with each of these establishments to rectify their registration status. However, for a variety of reasons, such as outdated contact information, FDA is not able to contact some of these establishments. The follow-up process, including sending a reminder email and contact by phone, requires considerable additional time and FDA staff resources.

When establishments fail to update their registration information in eHCTERS, they are improperly registered in eHCTERS and improperly displayed in the Public Query Application as ''Registered''. Not only does this inaccurate and outdated information compromise the integrity of eHCTERS, it also hinders the public's ability to rely on establishment registration information.

III. FDA's Intended Response

To address the above registration and listing problems, FDA is encouraging establishments that are required to register under part 1271 to review their current registration to ensure its accuracy. Any registrations that are outdated should be updated as soon as possible. Establishments are required to annually update their registration pursuant to FDA regulations. Establishments who do not submit their annual registration are in violation of the regulations at part 1271.

Ninety days after publication of this notice, and every January thereafter, FDA will inactivate an HCT/P establishment's registration when the establishment fails to submit their annual registration update during the previous annual update period between November 15 to December 31. FDA will no longer attempt to follow up with establishments to rectify their registration status. The eHCTERS Public Query Application will display the establishment registration status as ''inactive'' and include the last annual registration year. Email notification of the inactivation will be sent to the reporting official of the establishment, and the reporting official may access the establishment's account in eHCTERS to change or update its registration. If the email notifying the establishment of the change in registration status to ''inactive'' is undeliverable, FDA will call the phone number of the establishment to provide notification.

If an establishment changes or updates its registration in eHCTERS after its registration has been inactivated due to failure to annually update registration information, the eHCTERS Public Query Application will display the establishment's status as ''Registered'' and the last annual registration year will be updated to the current year.

IV. Resources Available To Assist With Updating Registration and HCT/P Listings

Access to part 1271 is available at: *https://www.ecfr.gov/current/title-21/chapter-I/subchapter-L/part-1271?toc=1.* The instructions for using eHCTERS to complete HCT/P establishment registration and HCT/P listing and submitting the annual registration updates, as well as information on the eHCTERS Public Query Application, are available at: *https://www.fda.gov/vaccines-blood-biologics/biologics-establishment-registration/tissue-establishment-registration.* Questions concerning registration can be emailed to *tissuereg@fda.hhs.gov.*

Dated: May 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11570 Filed 5–31–23; 8:45 am]

BILLING CODE 4164–01–P

[3] Electronic submission of HCT/P establishment and product listing information may be waived in certain circumstances as described in 21 CFR 1271.23. Submission of a request for a waiver does not excuse timely compliance with registration and listing requirements.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Early Hearing Detection and Intervention (EHDI) Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of a HRSA-initiated competitive supplement for the EHDI Program.

SUMMARY: HRSA will provide supplemental award funds for up to 20 Early Hearing Detection and Intervention Program recipients of $75,000 each with a period of performance of 12 months to develop the necessary partnerships, assessments, evaluations, and other activities at the state and local levels to ensure that all children identified as deaf or hard of hearing (DHH) and their families receive the services they need to meet language acquisition and other developmental milestones by age 3.

FOR FURTHER INFORMATION CONTACT: Dana Simms, Project Officer, *dsimms@hrsa.gov* or 301–443–1623.

SUPPLEMENTARY INFORMATION:

Intended Recipient(s) of the Award: Up to 20 EHDI grantees of those listed in Table 1 who demonstrate readiness as articulated in review criteria on methodology, work plan, and budget to address language acquisition and other developmental milestones at age 3 for children identified as DHH.

Amount of Competitive Awards: Up to 20 awards at $75,000 ($1.5 million total).

Project Period: April 1, 2023–March 31, 2024.

Assistance Listing (CFDA) Number: 93.251.

Award Instrument: Supplement.

Authority: Public Health Service Act, Title III, Section 399M(a) (42 U.S.C. 280g–1(a)).

Purpose/Justification: The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) provided HRSA's Maternal and Child Health Bureau with an additional $1 million for the EHDI program. The EHDI program currently funds 59 states and territories to support comprehensive systems of care so families with newborns, infants, and young children up to 3 years of age receive appropriate and timely services including screening, diagnosis, and early intervention. When children are identified as DHH early and they are provided with timely and appropriate intervention services, they have better vocabulary development, expressive language, and social-emotional development than children identified later. EHDI programs will use this supplemental support for 1 year to develop the necessary partnerships, assessments, evaluations, and other activities at the state and local levels to ensure that all children identified as DHH and their families receive the services they need to meet language acquisition and other developmental milestones by age 3. By September 2023, HRSA's Maternal and Child Health Bureau intends to provide a 1-year supplement for $75,000 for up to 20 existing grantees.

TABLE 1—CURRENT EHDI RECIPIENTS

Grant #	Award recipient name	State/territory
H61MC00015	Alaska Department of Health and Social Services	AK
H61MC00054	Alabama State Department of Public Health	AL
H61MC00076	Arkansas Department of Health	AR
H61MC33903	Department of Health American Samoa	AS
H61MC30765	EAR Foundation of Arizona	AZ
H61MC33904	NorCal for Deaf and Hard of Hearing	CA
H61MC33905	State of Colorado Department of Human Services	CO
H61MC00088	State of Connecticut	CT
H61MC00060	District of Columbia Department of Health	DC
H61MC23639	Delaware Department of Health & Social Services	DE
H61MC00086	Florida State Department of Health	FL
H61MC10346	Federated States of Micronesia	FM
H61MC22706	Georgia Department of Public Health	GA
H61MC24883	University of Guam	GU
H61MC00038	State of Hawaii Department of Health	HI
H61MC24884	University of Hawaii Systems	HI
H61MC26835	Iowa Department of Public Health	IA
H61MC00010	Idaho State Department of Health and Welfare	ID
H61MC04498	The Illinois Department of Health	IL
H61MC23640	Indiana State Department of Health	IN
H61MC00049	Kansas State Department of Health and Environment	KS
H61MC00033	Community For Children with Special Healthcare Needs	KY
H61MC00014	Louisiana State Department of Health and Hospitals	LA
H61MC00002	Massachusetts Department of Public Health	MA
H61MC00081	Maryland Department of Health and Mental Hygiene	MD
H61MC30766	Maine Educational Center for the Deaf & Hard of Hearing	ME
H61MC00056	Michigan Department of Community Health	MI
H61MC00035	Minnesota Department of Health	MN
H61MC00052	Mississippi State Department of Health	MS
H61MC00071	Missouri Department of Health	MO
H61MC30523	Commonwealth Healthcare Corporation	MP
H61MC00053	Montana State Department of Public Health and Human Services	MT
H61MC00043	North Carolina Department of Health & Human Services	NC
H61MC00028	Minot State University	ND
H61MC00065	Nebraska State Department of Health	NE
H61MC00034	New Hampshire Department of Health	NH
H61MC04397	New Mexico State Department of Health	NM
H61MC23641	New Jersey Department of Health and Senior Services	NJ
H61MC25010	Health and Human Services/Nevada Department of Health	NV
H61MC00005	Health Research Inc.	NY
H61MC00029	State of Ohio Department of Health	OH
H61MC00051	Oklahoma State Department of Health	OK
H61MC00057	Oregon State Department of Human Services	OR
H61MC24882	Commonwealth of Pennsylvania	PA
H61MC00050	Puerto Rico Department of Health	PR

TABLE 1—CURRENT EHDI RECIPIENTS—Continued

Grant #	Award recipient name	State/territory
H61MC05788	Republic of Palau	PW
H61MC00009	State of Rhode Island Department of Health	RI
H61MC00040	State of South Carolina	SC
H61MC33906	University of South Dakota	SD
H61MC00066	Tennessee State Department of Health	TN
H61MC26836	Texas Department of State Health Services	TX
H61MC00042	Utah Department of Health	UT
H61MC00046	Virginia State Department of Health	VA
H61MC23642	U.S. Virgin Islands Department of Health	VI
H61MC09029	Vermont State Agency for Human Services	VT
H61MC00084	Washington State Department of Health	WA
H61MC00024	Wisconsin Department of Health	WI
H61MC23643	West Virginia Department of Health and Human Resources	WV
H61MC00075	Wyoming State Department of Health	WY

Carole Johnson,

Administrator.

[FR Doc. 2023–11592 Filed 5–31–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ryan White HIV/AIDS Program Part F Dental Services Report, OMB No. 0915–0151—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of 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 July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 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) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ryan White HIV/AIDS Program Part F Dental Services Report, OMB No. 0915–0151—Extension.

Abstract: The Dental Reimbursement Program (DRP) and the Community Based Dental Partnership Program (CBDPP) under Part F of the Ryan White HIV/AIDS Program (RWHAP) offer funding to accredited dental education programs to support the education and training of oral health providers in HIV oral health care and reimbursement for the provision of oral health services for people eligible for the RWHAP. Institutions eligible for RWHAP DRP and CBDPP are accredited schools of dentistry and other accredited dental education programs, such as dental hygiene programs or those sponsored by a school of dentistry, a hospital, or a public or private institution that offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency. The RWHAP DRP Application for the Notice of Funding Opportunity includes the Dental Services Report (DSR) that applicants use to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV and to report annual program data. Awards are authorized under section 2692(b) of the Public Health Service Act (42 U.S.C. 300ff–111(b)). The form is also used by CBDPP recipients to report on services rendered, patients served, and partnerships as an annual data report. The DSR collects data on program information, client demographics, oral health services, funding, and training. It also requests applicants to provide narrative descriptions of their services and facilities, as well as their linkages and how they collaborate with community-based providers of oral health services.

Beginning with the 2022 DSR submission, the DSR website provided RWHAP DRP applicants and RWHAP CBDPP recipients an easily accessible and secure location to enter and submit their aggregate DSR data annually. The web-based platform is accessible by all users and allows users to easily navigate the site and enter their data. Users can see their report submission status and will no longer email their completed dataset to HRSA. The implementation of the DSR website has contributed to the overall decrease in burden hours. HRSA proposes two additions to the DSR data reporting tool. First, HRSA proposes adding an additional response option to the HIV/AIDS Status question to record clients whose HIV status is indeterminate. Second, HRSA proposes adding a question that will identify specific populations such as LGBTQI, urban/suburban/rural persons, homeless persons, persons with substance use disorder, migrant or seasonal workers, incarcerated/paroled persons, and/or runaway youth, who were specifically prioritized to receive services through community-based partnership programs.

A 60-day notice was published in the **Federal Register** on March 8, 2023 (Volume 88, No. 45, pages 14375–76). There were no public comments in response to the notice.

Need and Proposed Use of the Information: The primary purpose of collecting this information annually is to verify applicant eligibility and determine reimbursement amounts for DRP applicants, as well as to document the program accomplishments of

CBDDP grant recipients. This information also allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating persons with HIV, (2) the number and characteristics of clients who receive RWHAP supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to persons with HIV, and (5) the scope of grant recipients' community-based collaborations and training of providers. In addition to meeting the goal of accountability to Congress, clients, community groups, and the general public, information collected in the DSR is critical for HRSA and recipients to assess the status of existing HIV-related health service delivery systems. The information will provide the measurement data for the HRSA budget justifications on the following indicators: number of persons for whom a portion/percentage of their unreimbursed oral health costs were reimbursed and the number of providers trained through the RWHAP Part F Dental Reimbursement and Community-Based Partnership Programs.

Likely Respondents: Accredited schools of dentistry and other accredited dental education programs, such as dental hygiene programs or those sponsored by a school of dentistry, a hospital, or a public or private institution that offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden
Dental Services Report	DRP	56	1	56	32.0	1,792
	CBDPP	12	1	12	1.5	18
Total		68		68		1,810

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. 2023–11588 Filed 5–31–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The Division of Independent Review Application Reviewer Recruitment Form, OMB No. 0915–0295—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Division of Independent Review Application Reviewer Recruitment Form, OMB No. 0915–0295—Extension

Abstract: HRSA's Division of Independent Review (DIR) is responsible for administering the review of eligible applications submitted for grants under HRSA competitive announcements. DIR ensures that the objective review process is independent, efficient, effective, economical, and complies with the applicable statutes, regulations, and policies. Applications are reviewed by subject matter experts knowledgeable in health and public health disciplines for which support is requested. Review findings are advisory to HRSA programs responsible for making award decisions.

This ICR is for continuation of a web-based data collection system, the Reviewer Recruitment Module (RRM), used to gather critical reviewer information. The RRM uses standardized categories of information in drop down menu format for data such as the following: degree, specialty, occupation, work setting, and in select instances affiliations with organizations

and institutions that serve special populations. Some program regulations require that objective review panels contain consumers of health services. Other demographic data may be voluntarily provided by a potential reviewer. Defined data elements assist HRSA in finding and selecting expert reviewers for objective review committees.

HRSA maintains a roster of approximately 9,000 qualified individuals who have actively served on HRSA objective review committees. The web based RRM simplifies reviewer registration entry using a user-friendly Graphical User Interface with a few data drop down menu choices, a search engine that supports key word queries in the actual resume or Curriculum Vitae text and also permits reviewers to access and update their information at will and as needed. The RRM is 508 compliant and accessible by the general public via a link on the HRSA ''Grants'' internet site, or by keying the RRM URL into their browser. The RRM is accessible using any of the commonly used internet browsers.

A 60-day notice published in the **Federal Register** on March 6, 2023, vol. 88, No. 43; pp. 13832–13833. There were no public comments.

Need and Proposed Use of the Information: HRSA currently utilizes RRM to collect information from individuals who wish to volunteer as objective review committee participants for the Agency's discretionary and competitive grant or cooperative agreement funding opportunities. RRM provides HRSA with an effective search and communication functionality with which to identify and contact qualified potential reviewers. The RRM has an enhanced search and reporting capability to help DIR ensure that the HRSA reviewer pool has the necessary skills, education, and diversity to meet the ever-evolving need for qualified reviewers. If HRSA identifies either an expertise or demographic that is under-represented in the RRM pool, HRSA is able to recruit specifically to address those needs. Expertise is always the primary determinant in selecting potential reviewers for any specific grant review. No reviewer is required to provide demographic information to join the reviewer pool or be selected as a reviewer for any competition.

Likely Respondents: All HRSA reviewers must possess the technical skill and ability to access the internet on a secure desktop laptop, or touch pad, and either a land line or Voice Over internet Protocol capability in order to participate in HRSA objective review committees. Reviewers are professionals with expertise and experience consistent with the HRSA mission. Certain legislation requires HRSA programs to include consumers of specific health care services in the objective review committee.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
New reviewer	2,000	1	2,000	.166	332
Updating reviewer information	9,000	1	9,000	.333	2,997
Total	11,000		11,000		3,329

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. 2023–11589 Filed 5–31–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; PCORNET Study.

Date: July 11, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11671 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grants (R34 Clinical Trial Not Allowed); NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: June 26, 2023.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761–7792, *caitlin.brennan2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11649 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Non-Human Primate Tissue Bank.

Date: July 7, 2023.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis-Hardell, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, 7201 Wisconsin Ave., Rm. 2E405, Bethesda, MD 20814, (301) 555–1234, *kaitlyn.hardell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11669 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the Center for Scientific Review Notice of Closed Meetings that were published in the **Federal Register** on May 22, 2023, 88 FR 32778.

The publication is being amended to change the statements ''notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board'' to ''notice is hereby given of the following meetings''. In the amended portion of the notice, the NIH Clinical Center Research Hospital Board was listed in error and the meetings listed within the **Federal Register** notice are not related to that Board. There are no changes to the listed meetings. The meetings are closed to the public.

Dated: May 25, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11597 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Advisory Board (NCAB) and NCI Board of Scientific Advisors (BSA).

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. 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/.*

A portion of the National Cancer Advisory Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board *Ad Hoc* Subcommittee on Population Science, Epidemiology and Disparities.

Date: June 13, 2023.

Open: 6:45 p.m. to 8:15 p.m.

Agenda: Discussion on Population Science, Epidemiology and Disparities.

Place: Gaithersburg Marriott Washingtonian Center, Room—Salon E and G, 9751 Washington Boulevard, Gaithersburg, MD 20878.

Contact Person: Philip E. Castle, Ph.D., M.P.H., Executive Secretary, NCAB *Ad Hoc* Subcommittee on Population Science, Epidemiology and Disparities National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 5th Floor, Room 5E410, Bethesda, MD 20892, 240–276–7120, *philip.castle@nih.gov.*

Name of Committee: National Cancer Advisory Board and NCI Board of Scientific Advisors.

Date: June 14, 2023.

Open: 8:30 a.m. to 3:50 p.m.

Agenda: Joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors, NCI Director's Report and Presentations.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406 & 408, Rockville, MD 20850.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board.

Date: June 14, 2023.

Closed: 3:50 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406 & 408, Rockville, MD 20850.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov*.

Name of Committee: National Cancer Advisory Board and NCI Board of Scientific Advisors.

Date: June 15, 2023.

Open: 9:00 a.m. to 12:00 p.m.

Agenda: Joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors, NCI Board of Scientific Advisors Concepts Review and Presentations.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406 & 408, Rockville, MD 20850.

Contact Person: Paulette S. Gray, Ph.D., Director Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NCI-Shady Grove campus. All visitors 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: *NCAB: http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm, BSA: http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11673 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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: Allergy, Immunology, and Transplantation Research Committee Allergy, Immunology, and Transplantation Research Committee (AITC).

Date: June 21–22, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Room 3G51A, Bethesda, MD 20892, 240–507–9685, *thomas.conway@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 25, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11645 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of the Centers of Biomedical Research Excellence (COBRE) Phase 1 Applications.

Date: July 13, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18–01, Bethesda, Maryland 20892, 301–594–3663, *sidorova@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIH Pathway to Independence Award (K99/R00) Applications.

Date: July 18–19, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN12B, Bethesda, Maryland 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11667 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Population based Research in Infectious Disease Study Section.

Date: June 22–23, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel Bethesda Downtown, 4646 Montgomery Avenue, Bethesda, MD 20814.

Contact Person: Randolph Christopher Capps, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 480–6309, *cappsrac@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics and Biosensors.

Date: June 22–23, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assays, Diagnostics, Instrumentation, and Interventions.

Date: June 22–23, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Thomas Zeyda, Ph.D., Scientific Review Officer, The Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6921, *thomas.zeyda@nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.

Date: June 22–23, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *pyonkh2@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: June 22–23, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mohammad Samiul Alam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809D, Bethesda, MD 20892, (301) 435–1199, *alammos@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory Vision and Low Vision Technologies.

Date: June 22–23, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8992, *mallonb@mail.nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: June 22–23, 2023.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: June 22, 2023.

Time: 3:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Georgetown, 2121 M Street NW, Washington, MD 20037.

Contact Person: Benjamin Greenberg Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive sciences.

Date: June 23, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182 MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Aspects of the Blood-Brain Barrier and Neurovascular System and Therapeutic Strategies.

Date: June 23, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4185, MSC 7850, Bethesda, MD 20892, (301) 402–3726, *boycevs@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 25, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11598 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the Center for Scientific Review Notice of Closed Meetings that were published in the **Federal Register** on May 23,2023, 88 FR 33156.

The publication is being amended to change the statements ''notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board'' to ''notice is hereby given of the following meetings''. In the amended portion of the notice, the NIH Clinical Center Research Hospital Board was listed in error and the meetings listed within the **Federal Register** notice are not related to that Board. There are no changes to the listed meetings. The meetings are closed to the public.

Dated: May 25, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11596 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings of the National Institute of Environmental Health Sciences.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Maintaining and Enriching Environmental Epidemiology Cohorts to Support Scientific and Workforce Diversity.

Date: June 22, 2023.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 984–287–3236, *bass@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; NIH Summer Research Education Experience Program.

Date: June 23, 2023.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Beverly W. Duncan, Ph.D., Keystone Building, 530 Davis Drive, Room 3130, Durham, NC 27713, (240) 353–6598, *beverly.duncan@nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Utilizing Telomere Status to Reveal Molecular Mechanisms Underlying Susceptibility and Resiliency in Response to Environmental Exposures.

Date: June 27, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 984–287–3340, *worth@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Environmental Exposures Impacting Psychiatric Disorders R01 and R21 Grant Applications.

Date: June 28–29, 2023.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, 530 Davis Dr., Keystone Bldg., Room 3094, Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Conflict SEP Environmental Exposures Impacting Psychiatric Disorders (R01 and R21).

Date: June 29, 2023.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 984–287–3340, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11672 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Office of Research Infrastructure Programs Special Emphasis Panel; Member conflict: STOD.

Date: June 28, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

(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 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11668 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Integrated Preclinical/Clinical AIDS Vaccine Development Program (IPCAVD) (U19 Clinical Trial Not Allowed).

Date: June 28, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Poonam Pegu, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20852, 240–292–0719, *poonam.pegu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 25, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11648 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 20, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, (301) 435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Drug and Biologic Disposition and Toxicity Study Section (DBDT).

Date: June 22–23, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.

Date: June 22–23, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Sarah Vidal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (301) 480–5359, *sarah.vidal@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.

Date: June 22–23, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: June 22–23, 2023.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bernard Rajeev Srambical Wilfred, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *bernard.srambicalwilfred@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: The Cellular and Molecular Biology of Complex Brain Disorders.

Date: June 22, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

Date: June 22–23, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda Wagner Jurata, Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–8032, *linda.jurata@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: June 22–23, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janita N. Turchi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–4005, *turchij@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: June 22–23, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, (301) 402–3019, *andrew.wolfe@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 25, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11647 Filed 5–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/

800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917,

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085. Testing for Department of Defense (DoD) Employees Only

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–11650 Filed 5–31–23; 8:45 am]

BILLING CODE 4162–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2020–0116; FF06E23000–234–FXES11140600000]

Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Application; Candidate Conservation Agreement With Assurances and Categorical Exclusion for the Greater Sage-Grouse; Morgan, Rich, Summit, and Weber Counties, Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are announcing the availability of documents related to an application for an enhancement of survival permit (permit) under the Endangered Species Act. Farmland Reserve, Inc. (FRI) and AgReserves, Inc. (ARI) (collectively referred to as DLL) have applied for a permit associated with the implementation of a candidate conservation agreement with assurances (CCAA) for the greater sage-grouse (*Centrocercus urophasianus*) for the Deseret Land and Livestock (DLL Ranch) in Utah. The purpose of this CCAA is for the Service to join with the Utah Division of Wildlife Resources and DLL (collectively, the parties to this CCAA), to implement conservation measures for greater sage-grouse in a manner that is consistent with the Service's Policy on CCAAs and applicable Service regulations. The documents available for review and comment are the applicant's CCAA, which is part of the permit application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion under the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before July 3, 2023. Comments submitted online at *https://www.regulations.gov* (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on July 3, 2023.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R6–ES–2020–0116 at *https://www.regulations.gov.*

Submitting comments: To submit written comments, please use one of the following methods, and note that your information requests or comments are in reference to the DLL CCAA for greater sage-grouse.

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments to Docket Number FWS–R6–ES–2020–0116.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2020–0116; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: George Weekley, by phone at 385–285–7929 or email at *george_weekley@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TTD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Farmland Reserve, Inc. (FRI) and AgReserves, Inc. (ARI) (collectively referred to as DLL). The applicants have applied for a 30-year enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA or Act; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the greater sage-grouse (*Centrocercus urophasianus*) associated with the implementation of a candidate conservation agreement with assurances (CCAA) on the Deseret Land and Livestock Ranch (DLL Ranch) in Morgan, Rich, Summit, and Weber Counties, Utah.

A CCAA is an agreement between the Service, partners, and landowners for voluntary management of non-Federal lands to remove or reduce threats to species that may become listed under the Act. In return for implementing conservation measures in a CCAA, the Service gives participants assurances that, should the covered species become listed, the Service would not impose land, water, or resource use restrictions or conservation requirements beyond those agreed to in the CCAA.

Applicant's Candidate Conservation Agreement With Assurances

FRI and ARI have submitted this CCAA to implement conservation measures for greater sage-grouse on private lands of the DLL Ranch. The DLL Ranch is located primarily in Morgan, Rich, Summit, and Weber Counties in northern Utah, and is comprised of approximately 210,421 acres (328.8 square miles) of private land. The DLL Ranch has historically participated in greater sage-grouse conservation without any regulatory assurances. This permit would provide DLL with regulatory assurances and incentives under the ESA based on DLL's ongoing commitments for proactive conservation for greater sage-grouse. The requested permit duration is for 30 years. Proposed conservation measures include continued management of grazing and associated vegetation treatments so that the population of greater sage-grouse is maintained or improves over the term of the agreement. These management strategies include: (1) using green-strips to minimize fire in greater sage-grouse winter habitat; (2) careful planning and execution of rest-rotation grazing; and (3) vegetation treatments for sagebrush management, such as disking and planting native vegetation, prescribed fire, sheep browsing, chemical treatment, and mechanical treatment.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. 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 disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Clinton Riley,

Acting Assistant Regional Director, Ecological Services, Mountain-Prairie Region.

[FR Doc. 2023–11708 Filed 5–31–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035948; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Rochester Museum & Science Center (RMSC) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, and Yates Counties, NY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 3, 2023.

ADDRESSES: Kathryn Murano Santos, Rochester Museum & Science Center, 657 East Avenue, Rochester, NY 14607, telephone (585) 697–1929, email *kmurano@rmsc.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Rochester Museum & Science Center. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Rochester Museum & Science Center.

Description

Human remains representing, at minimum, one individual were removed near Gowanda in Cattaraugus County,

NY, and they were acquired by A.C. Parker in 1953. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from the Ripley Site (Wfd 001) in Chautauqua County, NY. The human remains of one of these indivduals were collected by George Love in 1956, and they were gifted to the RMSC in 1959. The human remains of the second individual were taken by an unknown individual at an unknown date. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 100 individuals were removed from the Westfield Site (Wfd 004) in Chautauqua County, NY, and they were donated to the RMSC by Richard P. Wright in 1977. No known individuals were identified. The five associated funerary objects are one piece of leather; one lot of potsherds; one lot of soil; one lot of stones; and one walnut.

Human remains representing, at minimum, four individuals were removed from the Goodyear (Mullen) Site (Dep 001) in Erie County, NY. These human remains were collected by the Buffalo Museum of Science and donated to the RMSC between 1948 and 1949. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Green Lake Site (Buf 001) in Erie County, NY. These human remains were removed by an unknown individual at an unknown date. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 75 individuals were removed from the Hiller Road Ossuary (Dep 002; Dep 002–2) in Erie County, NY. These human remains were removed in 1957 during a salvage expedition conducted by the RMSC's predecessor (the Rochester Museum of Arts and Sciences). No known individuals were identified. The three associated funerary objects are one pottery sherd; one lot of flakes, flint, sherds, coal, stone, and charcoal; and one lot of flakes, flint, sherds, and limestone.

Human remains representing, at minimum, 13 individuals were removed from the Kleis Site (Edn 001; Edn 001–2) in Erie County, NY. In 1959, these human remains were collected by Marian White of the Buffalo Museum of Science and donated to the RMSC. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 15 individuals were removed from the Nursery Site (Dep 004) in Erie County, NY. These human remains were located by children and collected by Gordon Schmahl on an unknown date, and they were donated to the RMSC by M.E. White in 1963. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, four individuals were removed from the Van Son Farm Site in Erie County, NY. These human remains were collected by Frederick Houghton in 1909, and they were donated to the RMSC by the Buffalo Museum of Science in 1942. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Clinton Street in Buffalo in Erie County, NY. These human remains were located in 1901, and they were acquired by the RMSC, through Alvin H. Dewey, between 1928 and 1929. No known individual was identified. The one currently missing associated funerary object is a brass kettle.

Human remains representing, at minimum, two individuals were removed from the Buzzie Farm Site in Genesee County, NY. These human remains were collected by J.H. Bailey on an unknown date. No known individuals were identified. Of the 26 associated funerary objects listed, 25 are present and accounted for in the RMSC collections, and one object is currently missing. The 25 present associated funerary objects are one celt-like stone adze; three bone awls; two bone (pin-like) awls; one lot of bone (pin-like) awls; one lot of flint chips and flakes; one coral cup; one lot of faunal remains; two lots of bone fish hook pins; one flint; one bone harpoon; one flint knife blade; one stone perforated disk; one projectile point; two antler projectile points; one notched triangular bone point; 2 lots of cut bird bone tubes; one worked bone resembling a tooth; one worked mammal femur; and one lot of worked turtle bones. The one currently missing associated funerary object is a (restored) turtle shell rattle.

Human remains representing, at minimum, one individual were removed from the Elba Hotel in Genesee County, NY. In August of 1938, these human remains were located and given to the State Police, and they were later transferred to the RMSC. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual was removed from the Leslie Plue Farm Site in Genesee County, NY. These human remains were excavated in 1937, during an RMSC expedition. No known individual was identified. The three associated funerary objects are one scarred stone; one lot of scraper flakes; and one lot of potsherds.

Human remains representing, at minimum, one individual were removed from the LeRoy Interchange Gravel Pit (Gustin Road Burial Pit) in Genesee County, NY. In 1954, these human remains were acquired by the State Police Barracks and donated to the RMSC. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from an unknown geographic location in Genesee County, NY. These human remains were acquired by the New York State Police on July 1, 1977, and they were later transferred to the RMSC. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 19 individuals were removed from the Cole Gravel Pit Site (Hne 017) in Livingston County, NY. These human remains were both excavated and surface collected by the RMSC between 1967 and 1969. No known individuals were identified. Of the 19 associated funerary objects listed, 18 are present and accounted for in the RMSC collections, and one object are currently missing. The 18 present associated funerary objects are one lot containing beads, charcoal, faunal remains, and shells; one lot containing chert, faunal remains, and shells; three lots of faunal remains; one lot of chert flakes; one lot of fragmentary faunal remains; one lot of miscellaneous materials; one lot containing shells and faunal remains; and one lot containing snail shells, stones, and a faunal fragment; three flint knives; one flint projectile point fragment; two flint projectile points; and two flint spearheads. The one currently missing associated funerary object is a partial dog skeleton.

Human remains representing, at minimum, three individuals were removed from the Cole Gravel Pit Site (Hne 017) in Livingston County, NY. The human remains of one of these individuals were collected by ''Wm.'' Carter and gifted to Morgan Chapter in the autumn of 1967. The human remains of a second individual were collected and donated to the RMSC by George Hamell on August 14, 1968. The remains of a third individual were acquired by the RMSC from an unknown individual on July 10, 1967. No known individuals were identified.

No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Dansville Flats Site (Wld 010) in Livingston County, NY. These human remains were collected by W.A. Ritchie during an RMSC expedition in 1945. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Davis Site (Hne 065) in Livingston County, NY. These human remains were collected by Clayton Mau in 1961, and they were donated to the RMSC by Edward A. Mau on August 29, 1966. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Dutch Hollow Site (Hne 001) in Livingston County, NY. These human remains were recovered during a field expedition led by William A. Ritchie of the RMSC in 1934. No known individual was identified. The one associated funerary object is a lot of beads.

Human remains representing, at minimum, two individuals were removed from the Fall Brook Ossuary Site (Cda 18) in Livingston County, NY. These human remains were collected by William A. Ritchie during an RMSC expedition in October of 1936. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 23 individuals were removed from the Frog Mound Site (Cda 012) in the town of Geneseo in Livingston County, NY. The human remains of two of these individuals were excavated by Charles Wray in 1956 and donated to the RMSC. The remains of two additional individuals were removed by an unknown individual on an unknown date. The human remains of 19 additional individuals along with 12 associated funerary objects were excavated during several RMSC expeditions during 1956 and 1957. No known individuals were identified. The 12 associated funerary objects are two anvil stones; one flint nodule; one lot containing calcined faunal bone and flint flakes; one lot containing Onondaga flint pieces, red jasper, and nodular flint(?); one lot of stone pieces from a burial platform; one lot of soil; three lots containing soil and bone fragments; and two lots of soil fill.

Human remains representing, at minimum, one individual were removed from the Geneseo Mound/Big Tree Farm Site (Cda 007) in Livingston County, NY. These human remains were removed during an RMSC field expedition led by William A. Ritchie in 1936. No known individual was identified. The one associated funerary object is a lot of brass rings.

Human remains representing, at minimum, one individual were removed from the Hoppough Site (Hne 037) in the Town of Conesus in Livingston County, NY. These human remains were collected by an unknown individual and donated to the RMSC in 1957. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Lower Fall Brook Site (Cda 004) in the town of Geneseo in Livingston County, NY. These human remains were collected by A. Hoffman and donated to the RMSC in 1958. No known individual was identified. The one associated funerary object is a porcelain cup with a handle. It is currently missing.

Human remains representing, at minimum, five individuals were removed from the Patridge (Patry) Site (Cda 8–4) in Livingston County, NY. The human remains of one of these individuals were collected by A. Hoffman on an unknown date. The human remains of a second individual along with one associated funerary object were excavated on May 10, 1958 and donated to the RMSC by Charles Barton. The human remains of a third individual were collected and donated to the RMSC by William L. Carter on May 10, 1958. The human remains of a fourth individual were probably collected by A.K. Guthe on May 12, 1958. The human remins of a fifth individual along with one associated funerary object were collected by Don Hudson on April 5, 1959. No known individuals were identified. The two associated funerary objects are one body sherd and one lot of charcoal pieces. They are currently missing.

Human remains representing, at minimum, four individuals were removed from the Piffard Site (Cda 060) in York Township in Livingston County, NY. The human remains of three of these individuals along with one associated funerary object were collected by Robert Hill and donated to the RMSC in 1946. The human remains of a fourth individual were removed by an unknown individual on an unknown date. No known individuals were identified. The one associated funerary object is a lot containing soil and bone fragments.

Human remains representing, at minimum, three individuals were removed from the Reed House Site (Cda 027) in Livingston County, NY. These human remains were collected during an RMSC expedition in 1970. No known individuals were identified. The four associated funerary objects are one stone axe; one shell bead; one flint flake; and one lot of fragmentary faunal remains.

Human remains representing, at minimum, two individuals were removed from the Reid Farm Site (Cda 015), located in the Town of Caledonia in Livingston County, NY. These human remains were acquired by Charles Wray in 1961. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Site 30 LVTN2 north of Chandler Road in Livingston County, NY. These human remains were collected by George R. Hamell on December 24,1969. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from Squawkie Hill (Nda 001) in the township of Leicester in Livingston County, NY. The human remains of one of these individuals along with 11 associated funerary objects were collected by William A. Ritchie through an RMSC expedition in June of 1936. The human remains of a second individual were removed during a RMSC expedition at an unknown date. The human remains of a third individual were donated to the RMSC by an unknown individual at an unknown date. No known individuals were identified. The 11 associated funerary objects are one lot of bones; two lots of burial matrix; one clam shell fragment; two flakes; one lot of body potsherds; two lots of worked stone core fragments; one lot of lithic flakes; and one lot of shell clam fragments.

Human remains representing, at minimum, two individuals were removed from the Webb Site (Can 30) in Livingston County, NY. These human remains were collected by W.A. Ritchie on September 29, 1933. No known individuals were identified. The one associated funerary object is one lot of arrowpoints.

Human remains representing, at minimum, two individuals were removed from the York Gravel Pit, located in the town of Caledonia in Livingston County, NY. These human remains were collected by W.A. Ritchie during an RMSC expedition in 1946. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, eight individuals were removed from Cuylerville in Livingston County, NY. These human remains were collected by Robert Hill and donated to

the RMSC in 1946. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Dibble property in Livingston County, NY. These human remains presumably were acquired by Alvin Dewey from George Salmon on May 3, 1919. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Ohagi area in Livingston County, NY. These human remains were collected by George R. Hamell at an unknown date. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from a site near Piffard in Livingston County, NY. These human remains were gifted to the RMSC by Robert R. Hill on October 16, 1946. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from an unknown location in Livingston County, NY. These human remains were donated to the RMSC by G. Hamell in 1969. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from the A and R Gravel Pit Site (Bgn 028), located in the town of Wheatland, in Monroe County, NY. These human remains were collected by Pat Vaccarelli and donated to the RMSC on August 27, 1965. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Brook-Lea Country Club Site, located in the town of Coldwater, in Monroe County, NY. These human remains were collected by John Bailey in 1936. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 10 individuals were removed from the Bushman Site (Roc 030), located in the town of Henrietta, in Monroe County, NY. These human remains were collected during a bulldozing operation in 1960, and they were acquired by the RMSC, through the Monroe County Sheriff, in 1960. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 10 individuals were removed from the Campbell Gravel Pit Site (Roc 020) in Monroe County, NY. These human remains were collected by Floyd Urkfitz and donated to the RMSC in 1945. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Central Trust Company Site in Monroe County, NY. These human remains were encountered by construction workers while excavating the basement for the Central Trust Company addition, and they were acquired by an RMSC expedition on October 1, 1953. No known individual was identified. The two associated funerary objects are one piece of carbonized wood and one lot containing wood, nails, iron, and soil.

Human remains representing, at minimum, one individual were removed from Dann Site (Hne 003) in Monroe County, NY. These human remains were transferred to the RMSC by H.L. Schoff at an unknown date. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the DeWitt Site (Roc 029), located in the town of Webster, in Monroe County, NY. These human remains were collected by Donald Karnes, Henry Wengender, Neil Hasenauer, and Gary Oechie in 1958. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Ellison Park in Monroe County, NY. These human remains were encountered by road workers on the west side of Irondequoit Creek, and they were acquired by W.A. Ritchie during a field expedition in the fall of 1935. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Farley Farm (Stull) Site (Hne 021) in Monroe County, NY. These human remains were collected by William A. Ritchie during an RMSC (formerly Rochester Museum of Arts and Sciences) excavation in the fall of 1935. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Garbutt Gravel Pit (Bgn 006), located in the Town of Wheatland, in Monroe County, NY. These human remains were collected by John Bailey and given to the RMSC in the 1930s. No known individual was identified. The one associated funerary object is an antler tine.

Human remains representing, at minimum, one individual were removed from the Glen Edith, in the Town of Webster, in Monroe County, NY. These human remains were found around 1898, and they were donated to the RMSC by F.F. Jones on May 20, 1938. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Heck Site (Bgn 034), located in the Town of Wheatland, in Monroe County, NY. These human remains were removed as a part of an RMSC expedition in 1974, after being reported by New York State Police. The burial was removed by machinery during excavation for a leach line, and the human remains were gifted to the RMSC by the property owner. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Jacimo Site (Bgn 026), located near Churchville, in Monroe County, NY. These human remains were collected by W.E. Forney and brought to the RMSC in 1962. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 13 individuals were removed from the LaBar Site (Roc 007), located on Chili Road, in Monroe County, NY. The human remains of one of these individuals were encountered by William LaBar in 1933. The human remains of an additional 11 individuals were collected by W.A. Ritchie during an RMSC expedition in October of 1933. The human remains of one additional individual were collected by Charles Cowles and donated to the RMSC in 1928. No known individuals were identified. The one associated funerary object is one pottery sherd.

Human remains representing, at minimum, one individual were removed from the Markham Site (Hne 013) in Monroe County, NY. These human remains were discovered in the RMSC's collections in 2022. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Martin Road Gravel Pit in Monroe County, NY. These human remains were collected by the Monroe County Coroner's Office and gifted to the RMSC on April 28, 1950. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from the McGurk Site (Roc 045–2) in the Town of Webster in

Monroe County, NY. These human remains were collected by an unknown individual through a salvage expedition in 1971, and they were donated to the RMSC at an unknown date. No known individuals were identified. The one associated funerary object is one flint spear blank.

Human remains representing, at minimum, one individual were removed from the Plum Orchard Site (Roc 026), located in the Town of Penfield, in Monroe County, NY. These human remains were encountered during an RMSC salvage expedition in 1962. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 15 individuals were removed from the Scottsville Grave Pit A (Bgn 010) in Monroe County, NY. The human remains of five of these individuals were collected by W.A. Ritchie, and they were acquired by the RMSC in 1923, 1924, and 1949. The human remains of seven additional individuals were collected by A.C. Parker, and they were acquired by the RMSC in 1925, 1927, and 1929. The human remains of one additional individual were collected by John H. Bailey, and they were donated to the RMSC in 1949. The human remains of two additional individuals were removed by an unknown individual, and they were acquired by the RMSC at an unknown date. No known individuals were identified. The one associated funerary object is one turtle bone.

Human remains representing, at minimum, nine individuals were removed from the SeaBreeze Site (Roc 020) in Monroe County, NY. These human remains were excavated by the RMSC in 1939. No known individuals were identified. The 17 associated funerary objects are one side-notched or stemmed chert projectile point fragment; one side-notched or stemmed chert projectile point with missing base; one stemmed chert projectile point; one corner-notched chert projectile point; one chert cache blade; one lot of copper beads; one lot containing bones, soil, and grass; one shale gorget fragment; one side-notched chert projectile point; one ground-banded slate; one pendant-shaped ground banded slate whetstone(?); one grounded sandstone whetstone(?); one ground slate; one lot of charcoal fragments; one lot of beaver incisor fragments; one soil sample; and one lot containing soil, chert, and bone fragments.

Human remains representing, at minimum, three individuals were removed from the Sparnon Site (Bgn 19–3(?)), located in North Chili, in Monroe County, NY. The human remains of two of these individuals were excavated by W.A. Ritchie during an RMSC expedition in 1941, and they were donated to the RMSC by W.S. Cornwell in 1963. The human remains of one additional individual were excavated by W.A. Ritchie and W.S. Cornwell in 1942. No known individuals were identified. The one associated funerary object is one lot containing mixed refuse.

Human remains representing, at minimum, two individuals were removed from the Wells Farm Site, located in the Town of Wheatland, in Monroe County, NY. These human remains were collected by William A. Ritchie on January 18, 1934. No known individuals were identified. The one associated funerary object is one lot containing soil and bone fragments.

Human remains representing, at minimum, two individuals were removed from the Woodchuck Hill Site (Roc 001), located in the Town of Scottsville, in Monroe County, NY. These human remains were collected by William A. Ritchie during an RMSC expedition in 1935. No known individuals were identified. The three associated funerary objects are one lot of chert projectile point bases; one lot of chert projectile points; and one lot of soil.

Human remains representing, at minimum, one individual were removed from the Zastrocky Site (Bgn 033), located in the Town of Bergen, in Monroe County, NY. These human remains were encountered by farm machinery and reported to State Police by the landowner. Following a referral from the Monroe County Medical Examiner, the RMSC removed the remains during a salvage expedition in 1974. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Genesee River at Upper Falls, in Monroe County, NY. The burial containing these human remains was found on Rochester Gas and Electric property on October 21, 1974. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Stottle Road, located in Chili, in Monroe County, NY. These human remains were collected by William R. Ritchie during an RMSC expedition on November 7, 1938. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Indian Hill Farm in Monroe County, NY. These human remains were acquired by the RMSC from Harold Meyer around 1932. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Irondequoit Bay in Monroe County, NY. These human remains were found by Frank Limpert and donated by A.C. Parker in 1933. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Penfield in Monroe County, NY. These human remains are thought to have been collected by Ed Bouane in the 1950s. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Riga, near North Main St. Bridge, in Monroe County, NY. These human remains were brought to the RMSC by New York State Police on June 19, 1970. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the west bank of the Genesee River near Driving Park Bridge in Rochester, in Monroe County, NY. These human remains were donated to the RMSC by the Monroe County Medical Examiner's Office on November 14, 1973. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, four individuals were removed from the Clapp Estate, located in the town of Rush, in Monroe County, NY. These human remains were collected by Edwin Perry Clapp, and they were donated to the RMSC by Mrs. Margaret Clapp Ganzert, through Mrs. Margaret J. Bartlett. The human remains had been in the custody of the RMSC since April 14, 1969, after being transferred by Dr. John Edlaud, the Monroe County Medical Examiner. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Rochester Children's Shelter, located in the town of Rush, in Monroe County, NY. These human remains were collected by W.A. Ritchie in 1935. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Edson-Skivington Home, located in Scottsville, in Monroe County, NY. These human remains were encountered by David Ennis while excavating a cesspool in 1918, and they

were donated to the RMSC by Mrs. D. Ennis in 1975. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Scottsville, located in the town of Wheatland, in Monroe County, NY. These human remains were collected by Bernard Long, and they were donated to the RMSC by G. Hamell in 1967. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Cambria Ossuary (Twa 008) in Niagara County, NY. These human remains were donated to the RMSC by a private collector named Pechuman. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from the Gould Site, located in Cambria, in Niagara County, NY. These human remains were collected and donated to the RMSC by R. McCarthy, L.L. Pechumen, & A. Muller at unknown dates. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 20 individuals were removed from the Lewiston Site (Nfs 001) in Niagara County, NY. The human remains of 16 of these individuals were collected by Dr. Ernest Wende in 1904, and they were donated to the RMSC by the Buffalo Museum of Science. The human remains of two additional individuals were collected by Mr. Hooker, and they were donated to the RMSC by John Bailey in 1940. The human remains of one additional individual were collected by Frederick Houghton, and they were donated to the RMSC by the Buffalo Museum of Science in August of 1942. The human remains of one additional individual were collected by Kimball and donated to the RMSC in 1956. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 17 individuals were removed from the Orangeport Ossuary (Lkp 001), located in the Town of Orangeport, in Niagara County, NY. The human remains of six of these individuals were collected by Frederick Houghton in 1911, and they were donated to the RMSC by the Buffalo Museum of Science in 1942. The human remains of seven additional individuals were collected and donated to the RMSC by Richard McCarthy in 1946 and 1954. The human remains of two additional individuals were collected by C.F. Hayes & Stanley Vanderlaan during an RMSC expedition in 1965. The human remains of two additional individuals were collected and donated to the RMSC by C. Palmer in 1966. No known individuals were identified. The one associated funerary object is a pottery sherd.

Human remains representing, at minimum, one individual were removed from the Boughton Hill Site (Can 002) in Ontario County, NY. These human remains were discovered in the Rochester Museum and Science Center collection. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Beal Site (Can 010) in Ontario County, NY. These human remains were collected by Frederick Houghton and donated to the RMSC by the Buffalo Museum of Science. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from the California Ranch Site (Hne 22–4) in Ontario County, NY. The remains of one of these individuals were collected by Donald Hudson, and they were donated by him to the RMSC on June 2, 1953. The human remains of two additional individuals were collected by Reverend Francis A. Marks of St. Andrews Seminary in Rochester, New York, and they were donated to the RMSC on October 10, 1953. No known individuals were identified. The two associated funerary objects are one pottery sherd and one piece of charcoal. They are currently missing.

Human remains representing, at minimum, seven individuals were removed from the Canandaigua Veterans Hospital Road Site in Ontario County, NY. These human remains were collected by W.A. Ritchie during an RMSC expedition in June of 1936. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from the Clifton Springs Site (Plp 019), located in the town of Manchester, in Ontario County, NY. The human remains of one of these individuals were collected by W.A. Ritchie during an RMSC investigation of the Clifton Springs Sanitarium grounds in 1942. The human remains of a second individual were collected by Spencer Putnam, and they were donated to the RMSC by Al Hoffman in 1950. No known individuals were identified. The two associated funerary objects are one lot of organic matter and one lot of stems.

Human remains representing, at minimum, one individual are reasonably believed to have been removed from the Cornish Site (Hne 009) in Ontario County, NY. These human remains, which had formed part of a reconstructed burial, were donated to the RMSC by L.E. Dodgson in 1960. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Detro Site (Plp 021), located in the town of Gorham, in Ontario County, NY. These human remains were collected by C.F. Hayes on October 29, 1966. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Gorham High School Site (Plp 002) in Ontario County, NY. These human remains were donated to the RMSC by Sidney W. Thomas in 1931. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, five individuals were removed from the Magee Site (Plp 009), located near Canandaigua, in Ontario County, NY. The human remains of three of these individuals were collected and donated to the RMSC by Clarence Bill sometime between 1960 and 1961. The human remains of two additional individuals were collected by Clarence Bill and donated to the RMSC, through W. Cornwell, on March 30, 1963. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from the Martin Farm Site (Can 035), located in the town of Bristol, in Ontario County, NY. These human remains were collected by A.J. Hoffman in 1959. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 29 individuals were removed from Morrow Point (Hne 033; Hne 003–4) in Ontario County, NY. The human remains of three of these individuals were possibly removed by the RMSC. The human remains of one additional individual were excavated by the RMSC at an unknown date. The human remains of one additional individual were removed by an unknown individual at an unknown date. The human remains of one additional individual were excavated by Albert J. Hoffman and donated to the RMSC in 1960. The human remains of 12 additional individuals were collected during an RMSC expedition in 1956. The human remains of 10 additional

individuals were collected by Harry Schoff and donated to the RMSC in October of 1956. The human remains of one additional individual were excavated by an unknown individual on June 15, 1957. No known individuals were identified. Of the 12 associated funerary objects, four are present and eight are currently missing. The four present associated funerary objects, acquired by the RMSC in 1958, are one dog skeleton; one lot of canine skeletal fragments; the remains of a dog excavated from a burial by Charles Wray and Henry Schoff in the autumn of 1956; and one lot of pottery sherds excavated by A. Hoffman in the summer of 1957. The eight currently missing associated funerary objects are one lot of cord wrapped and decorated potsherds, one lot of incised body potsherds, and one lot of cord wrapped and platted potsherds acquired during an RMSC expedition in 1957; two lots of metal handle nail fragments and two lots containing fragments of fabric and/or vegetal matter excavated by A. Hoffman in 1961; and one lot of copper beads purchased by Charles Wray in 1971.

Human remains representing, at minimum, one individual were removed from the Payne Site (Can 042) in Ontario County, NY. These human remains were acquired by the RMSC from an unknown individual on November 17, 1977. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Phelps Site (Plp 025), located in Phelps Township, in Ontario County, NY. These human remains were excavated by the RMSC in 1980. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 14 individuals were removed from Putman Site (Plp 008), located in the town of Phelps, in Ontario County, NY. The human remains of one of these individuals were excavated during an RMSC expedition in 1953. The human remains of one additional individual were donated to the RMSC by Mrs. Frank Putman in August of 1953. The human remains of four additional individuals were collected by Mr. Frank Rockerfeller, and they were donated to the RMSC in 1953. The human remains of eight additional individuals were collected by a Mr. Hutchinson, a Capitol Engineers' foreman, and they were donated to the RMSC in 1953. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Reed Fort Site (HNE 5–4), located in Richmond Township, in Ontario County, NY. These human remains were excavated by Charles F. Hayes for the RMSC in 1966. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Richmond Mills Site (Hne 005) in Ontario County, NY. These human remains were possibly removed by Alvin Dewey in June of 1923. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Steele Site (CAN8–1) in Ontario County, NY. These human remains were donated to the RMSC by William Carter on June 28, 1968. No known individual was identified. The three associated funerary objects are one pot (?); one seed cake; and one potsherd.

Human remains representing, at minimum, one individual were removed from the Troutman Site (Plp 022–1), located in the town of Hopewell, in Ontario County, NY. These human remains were acquired during an RMSC expedition in 1968. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Wallace Hill Site (Plp 003) in Ontario County, NY. These human remains were collected by W.A. Ritchie during an RMSC expedition in the summer of 1934. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the E.S. Dombrowski Farm, located 1.5 miles Northwest of Clifton Springs, in Ontario County, NY. These human remains were collected by the Ontario County Sherriff during trenching to lay gas and electric services, and they were donated to the RMSC in 1956. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual are believed to have been removed from the village of Bloomfield in Ontario County, NY. These human remains were acquired by Milton Baxter possibly in 1950. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Chapin Street, located in Canandaigua, in Ontario County, NY. These human remains were collected by Don Patterson during a construction project in 1965, and they were donated by Eva Rippenger to the RMSC. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from a location east of Parrish House at Reeds Corner, in Ontario County, NY. These human remains were collected by W.A Ritchie during an RMSC expedition in 1934. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were found on the eastern shore of Canandaigua Lake in Ontario County, NY. These human remains were donated to the RMSC by an unknown individual at an unknown date. Possibly, they were collected and donated by a Dr. Price around 1930. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from an unknown location in the Phelps Township, in Ontario County, NY. These human remains were collected by Mrs. Frank Putman, Mr. Frank Rockerfeller, and Mr. Hutchinson during an RMSC expedition in 1953. No known individual was identified. These human remains are currently missing. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from a sand pit at Oaks Corner, in Ontario County, NY. These human remains were excavated by Edward Oaks in 1892 and donated to Dr. Ernest Wende. They were donated to the RMSC by the Buffalo Museum of Science in 1942. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed the Bamber Mound Site (Ood 007), located in the Carlton Township, in Orleans County, NY. The human remains of one of these individuals had belonged to the Palmer Collection. The human remains of the second individual were removed by an unknown individual at an unknown date. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, 16 individuals were removed the Shelby Fort Site (Mda 002), located in the Town of Shelby, in Orleans County, NY. The human remains of 11 of these individuals along with six associated funerary objects were gifted to the RMSC by the Shelby Fort Site in 1984. The human remains of four additional individuals were collected by Stanley Vanderlaan and donated to the RMSC between 1958 and 1961. The

human remains of one additional individual were surface collected by C. Palmer, R.F.D., in 1966. No known individuals were identified. The six associated funerary objects are one faunal bone; one lot containing charcoal, chert, and potsherds; one lot containing chert and other stone; one lot containing flint and charcoal; one lot of potsherds; and one lot containing soil and bone fragments.

Human remains representing, at minimum, one individual were removed from an area near Troutburg, in Orleans or Monroe County, NY. These human remains were given to the RMSC by the New York State Police on April 28, 1983. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 86 individuals were removed from the Lamoka Lake Site (Hpt 001) in Schuyler County, NY. The human remains of one of these individuals were re-excavated from Frontier Field by the RMSC Cultural Resource Survey Program, Research Division in 1995. The human remains of an additional 85 individuals along with 15 associated funerary objects were excavated by W.A. Ritchie and H.C. Follette during RMSC expeditions in 1927 and 1928. No known individuals were identified. The 15 associated funerary objects are one lot containing the remains of dog burials; three lots of shell beads; one lot of organic matter; two lots of a dog skull; four lots of faunal remains; two lots of faunal bone fragments; one lot of faunal bones; and one lot of seeds.

Human remains representing, at minimum, three individuals were removed from the Geneva (Seneca) Yacht Club Site (Gen 001) in Seneca County, NY. These human remains were acquired during an RMSC expedition in 1935. No known individuals were identified. The 13 associated funerary objects are two net sinkers; one lot of projectile points; two lots of faunal remains; one stone chopper; one shell disc bead; one broken engraved gorget; one triangular shell ornament; one lot of pendant fragments; one lot of rimsherds, bodysherds, and a pipe fragment; one bi-pointed bone tool; and one worked antler.

Human remains representing, at minimum, eight individuals were removed from the Kipp Island B Site (Aub 013), located on the Seneca River, in Seneca County, NY. The human remains of seven of these individuals along with three associated funerary objects were gifted to the RMSC by C. Armbruster in 1938. The human remains of the eighth individual were acquired by C. Armbruster from Herb Bigford and donated to the RMSC in 1938. No known individuals were identified. The three associated funerary objects are one bone awl and two body potsherds.

Human remains representing, at minimum, one individual were removed from a location near Painted Post, in Steuben County, NY. These human remains were acquired by the RMSC from A. Hoffman between June 10 and June 12, 1948. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed the Dhondt Site (Wpt 005) in Wayne County, NY. These human remains were surface collected during an RMSC expedition on June 20, 1959. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Elmer Rogers Site (Wpt 001) in Wayne County, NY. These human remains were collected by William A. Ritchie during an RMSC expedition in 1935. No known individual was identified. The five associated funerary objects are one lot containing bark, a deer patella, and part of a brown blanket adhering to human ribs; one lot containing bark and hair fragments; one corn bread (?) fragment; one squash (?) stem; and one metal kettle fragment.

Human remains representing, at minimum, one individual were removed from the Ganz or Gansz Site (Wpt 7–3) in Wayne County, NY. These human remains were discovered in the RMSC collections in 2022. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, seven individuals were removed from the Armstrong Site (Pyn 001) in Yates County, NY. The human remains of six of these individuals were collected during an RMSC salvage operation in 1958. The human remains of the seventh individual were collected by the Benton Highway Department during an RMSC salvage operation on August 18, 1958. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Blakeslee Site (Pyn 002) in Yates County, NY. These human remains were collected by Charles Blakesley, and they were acquired by the RMSC in 1961. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, 13 individuals were removed from the Greenidge Site (Dresden Power House Site) (Ovd 001) in Yates County, NY. The human remains of two of these individuals were excavated by C.F. Wray on July 6, 1939. The human remains of one additional individual were also excavated by C.F. Wray, and they were donated to the RMSC by the manager of the Dresden Power House on July 6, 1939. The human remains of an additional 10 individuals were excavated by W.A. Ritchie in June of 1939. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Macomb Gravel Pit Site (Nap 001) in Yates County, NY. These human remains were purchased by the RMSC from an unknown vendor in 1929. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Branchport in Yates County, NY. These human remains were encountered in 1865, and they were subsequently donated to the RMSC by E.E. Evans. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the town of Jerusalem in Yates County, NY. These human remains were collected by William A. Ritchie at an unknown date. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Rochester Museum & Science Center has determined that:

- The human remains described in this notice represent the physical remains of 676 individuals of Native American ancestry.
- The 181 objects described in this notice are reasonably believed to have been placed with or near individual

human remains at the time of death or later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Seneca Nation of Indians; Seneca-Cayuga Nation; and the Tonawanda Band of Seneca.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the Rochester Museum & Science Center must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Rochester Museum & Science Center is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11695 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035947; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: U.S. Department of the Interior, National Park Service, San Juan Island National Historical Park, Friday Harbor, WA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, San Juan Island National Historical Park (SAJH) has amended a Notice of Inventory Completion published in the **Federal Register** on July 18, 2008. This notice amends the cultural affiliation determination and number of associated funerary objects in a collection removed from San Juan County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 3, 2023.

ADDRESSES: Elexis Fredy, Superintendent, San Juan Island National Historical Park, 650 Mullis Street, Suite 100, P.O. Box 429, Friday Harbor, WA 98250, telephone (360) 378–2240 Ext. 2223, email *elexis_fredy@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, SAJH. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by SAJH.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (73 FR 41380–41381, July 18, 2008). Repatriation of the items in the original Notice of Inventory Completion has not occurred. On October 15, 2019, San Juan Island National Historical Park staff transported the human remains to the Washington Department of Archaeology and Historic Preservation for osteological examination. Two funerary objects from English Camp Site in San Juan County, WA, were identified during the examination. The two associated funerary objects (previously identified as no associated funerary objects) are one lot of faunal material and one lot of rocks. Following further consultation, seven additional Indian Tribes are determined to be culturally affiliated with the human remains and associated funerary objects listed in this amended notice.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, SAJH has determined that:

• The human remains described in this amended notice represent the physical remains of two individuals of Native American ancestry.

• The two objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Jamestown S'Klallam Tribe; Lower Elwha Tribal Community; Lummi Tribe of the Lummi Reservation; Port Gamble S'Klallam Tribe; Samish Indian Nation; Stillaguamish Tribe of Indians of Washington; Swinomish Indian Tribal Community; and the Tulalip Tribes of Washington.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, SAJH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. SAJH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11698 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035950; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Doniphan County, KS.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after July 3, 2023.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Kansas State University.

Description

Human remains representing, at minimum, 28 individuals were removed from Taylor Mound, located south of White Cloud, in Doniphan County, KS. In the summer of 1968, Taylor Mound was excavated as part of a Kansas State University archeological field school, under the direction of archeologist Dr. Patricia J. O'Brien. Radiocarbon dating of charcoal and burned wood samples collected at the site yielded dates corresponding to the Middle Woodland period (354 BC/BCE–A.D. 398). These dates also are consistent with most of the diagnostic artifacts recovered from the burial site. (Some pottery from the excavation also suggests the mound was utilized into the Late Prehistoric period and was associated with the Central Plains tradition (A.D. 1100–1350). In addition, two osteological studies were completed on the skeletal remains excavated from Taylor Mound. In 1971, Linda Klepinger and William M. Bass published the initial analysis, and in 2009, Lee Meadows Jantz, Richard L. Jantz, and Rebecca J. Wilson completed a second analysis. No known individuals were identified. The 1,390 associated funerary objects are 912 pieces of stone debitage, 10 hammerstones, nine bifaces, nine stone points, five scrapers, one celt, one stone bead, one stone blade, 200 unmodified shells, one modified bone disc, two turtle shell fragments, 212 ceramic body sherds, 10 ceramic rim sherds, one lot of burned animal bones, one lot of unburned animal bones, 12 charcoal samples, two sediment samples containing burned earth, and one metal broom handle that was excavated but is believed to be part of a previous site disturbance.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, Kansas State University has determined that:

- The human remains described in this notice represent the physical remains of 28 individuals of Native American ancestry.
- The 1,390 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Iowa Tribe of Kansas and Nebraska; Kaw Nation, Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after July 3, 2023. If competing requests for disposition are received, Kansas State University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11694 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035955; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), the American Museum of Natural History (AMNH) intends to repatriate a certain cultural item that meets the definition of a sacred object and that has a cultural affiliation with the Native Hawaiian organizations in this notice. The cultural item most likely was removed from the State of Hawaii.

DATES: Repatriation of the cultural item in this notice may occur on or after July 3, 2023.

ADDRESSES: Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the American Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the American Museum of Natural History.

Description

The one cultural item found in storage. In 1907, it was recorded in the Museum's catalog as a feather mask from ''the Hawaiian Islands, Collector Unknown.'' Based on consultation, as well as information in the published literature, this item most likely originated in Hawai'i. The one sacred object is an *akua hulu manu,* or Hawaiian feather god.

Cultural Affiliation

A detailed assessment of the sacred object was made by AMNH staff in consultation with representatives of Na Hoa Aloha O Ka Pu'uhonua o Hönaunau (Na Hoa Aloha) and the Office of Hawaiian Affairs (OHA). There is a relationship of shared group identity that can reasonably be traced between the sacred object and present-day Native Hawaiian organizations listed in this notice. The following types of information were used to reasonably trace the relationship: anthropological, historical, oral traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Native Hawaiian organizations, the American Museum of Natural History has determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native Hawaiian religious leaders for the practice of traditional Native Hawaiian religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the cultural item and the Na Hoa Aloha O Ka Pu'uhonua o Hönaunau and the Office of Hawaiian Affairs.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the American Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The American Museum of Natural History is responsible for sending a copy of this notice to the Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11690 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035954; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Edmonson County, KY.

DATES: Repatriation of the human remains in this notice may occur on or after July 3, 2023.

ADDRESSES: Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

Description

Human remains representing, at minimum, one individual were removed from Edmonson County, KY. Fragmentary human remains were collected by Phil Cummings Orr, an archeologist and Curator of Paleontology and Anthropology at the Santa Barbara Museum of Natural History in the 1930s-1960s. According to Orr, these human remains were ''from Sloth Cave, Edmonson County, Kentucky.'' Subsequently, the human remains were donated to the Santa Barbara Museum of Natural History. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historic, and other information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe; The Osage Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11687 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035945; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of the Interior, National Park Service, Fort Vancouver National Historic Site, Vancouver, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Fort Vancouver National Historic Site (FOVA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Walla Walla County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 3, 2023.

ADDRESSES: Tracy Fortmann, Superintendent, Fort Vancouver National Historic Site, 800 Hathaway Road, Building 722, telephone (360) 816–6205, email *Tracy_Fortmann@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, FOVA. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FOVA.

Description

Human remains representing, at minimum, one individual were removed from Walla Walla County, WA, by the Smithsonian Institution's River Basin Surveys in 1947, during the construction of the nearby McNary Dam and Lake Wallula Reservoir. National Park Service archeologists participated in this project. The human remains were removed from the site of Walúula, the largest village of the Walúulapam Sahaptin group and were housed at the Burke Museum until their transfer to FOVA in 1995. The 56 associated funerary objects are two nails, four bone beads, nine dentalium shells, one clothing rivet, two buttons, two tobacco pipe stems, two spurs, two shoe tacks, one bullet, six bottle fragments, one safety pin, one thimble fragment, seven ceramic tablewares, two lamp base glass fragments, one yellow metal loop eyelet, one yellow metal strap fragment, two yellow metal fragments, four lithic debitage, two uniface lithic flakes, one biface tool, one projectile point, one Intermountain or Shoshone pottery, and one bag of glass beads.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, historical information, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, FOVA has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 56 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Umatilla Indian Reservation; and the Nez Perce Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice and, if joined to a request from one or more of

the Indian Tribes, the Wanapum Band of Priest Rapids, a non-federally recognized Indian group.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, FOVA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. FOVA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11696 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035956; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Placer and Sutter Counties, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after July 3, 2023.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by UC Davis.

Description

The nine cultural items were removed from the Sugarpine area in Placer County, CA (UC Davis Accession 87 and UCDA) and Bear River and Robbins areas in Sutter County, CA (UCDA).

Between 1966 and 1976, cultural items were removed by UC Davis Department of Anthropology from various sites in the Sugarpine Reservoir area as a part of the Sugarpine Reservoir Archaeological Survey Project, which was conducted for the U.S. Bureau of Reclamation (Reclamation). Only in 2021 and 2022 did Reclamation determine that these items are not under their control. The object of cultural patrimony consists of one lot (approximately 178 items) of clay, stone, and historic objects.

At an unknown date, one cultural item was removed from the Sugar Pine area in Placer County, CA (UCDA). The circumstances surrounding the collection of the items are unknown. The one object of cultural patrimony is a metate.

At an unknown date, six cultural items were removed from the Bear River area in Sutter County, CA (UCDA). The circumstances surrounding the collection of the items are unknown. The six objects of cultural patrimony are one quartzite biface, one scraper, one hammerstone, two bifaces, and one whetstone.

In 1999, one cultural item was removed from the Robbins area in Sutter County, CA (UCDA) by UC Davis Department of Anthropology Professor Robert Bettinger and placed in the Department of Anthropology Teaching Collections. The one object of cultural patrimony is a hammerstone.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographical, historical, kinship, linguistic, oral traditional, and other relevant information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UC Davis has determined that:

- The nine cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. UC Davis is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11691 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035957; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Minnesota Indian Affairs Council, St. Paul, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Minnesota Indian Affairs Council (MIAC) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Aitkin, Cass, Hubbard, Kanabec, Ottertail, and Todd Counties, MN.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 3, 2023.

ADDRESSES: Dylan Goetsch, Minnesota Indian Affairs Council, 161 St. Anthony Avenue, Suite 919, St. Paul, MN 55103, email *dylan.goetsch@state.mn.us.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Minnesota Indian Affairs Council. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Minnesota Indian Affairs Council.

Description

At an unknown date, human remains representing, at minimum, three individuals were removed from Aitkin County, MN. The individuals were recovered by the homeowner during the construction of a house on Big Sandy Lake at the William Alexander Aitkin Fur Post site, which is situated within the Savana Portage State Park. In 1983, the homeowner donated the human remains and other artifacts from the property to a local historian. In 1988, the human remains and other artifacts were loaned to the Savannah Portage State Park (Minnesota Department of Natural Resources). In October of 1992, the Savannah Portage State Park did an inventory of the collection and transferred these human remains and funerary objects associated with them to the Minnesota Indian Affairs Council (H217). No known individuals were identified. The 24 associated funerary objects include sand, tin pail fragments, bark with vermillion, linen or cotton fabric, felt or wool fabric, leather, twisted cord, silver fragments (jewelry), a carved wooden stick, a wood fragment with cloth attached, black felt fabric, felt fabric with beads, braided hair, square nails, woven bark, rigs, wool fabric, a small silver or brass ring, a silver ribbon ring, a leather braid tie, wood fragments, small fragments of silver broaches, a small tied cloth object, woven fabric, and metal tinklers.

In July of 1966, human remains representing, at minimum, one individual were removed by a private citizen from an eroding bank at 21–AK–04, the Sandy Lake Northwest Company Post in Aitkin County, MN. In 1995, these human remains were transferred to the Minnesota Indian Affairs Council (H295). No known individual was identified. The 26 associated funerary objects include copper coils, hair, white shell beads, a white glass bead, metal fragments, faunal remains, a fur and cloth object, a cloth and metal object, and soil.

At an unknown time, human remains representing, at minimum, one individual were removed during road construction near Upper Rice Lake from Aitkin County, MN. The human remains were transferred to MIAC on November 8, 2007. A note with the human remains indicates they were initially given to a Dr. Brook by Gil (Gilbert) George of St. Paul and received the accession number 732. The note also indicates that a rifle and cartridge case were buried with the human remains, but those items were not transferred to MIAC or referenced in any other notes. No known individual was identified. No associated funerary objects are present.

On August 21, 2015, human remains representing, at minimum, one individual were removed during construction activities from the City of Lake Shore in Cass County, MN, and sent to the Ramsey County Medical Examiner's Office (2015–2084). On September 25, 2015, the human remains were transferred to the Minnesota Indian Affairs Council (H488). These human remains belong to an adult male. No known individual was identified. No associated funerary objects are present.

Between 1984 and the mid-1990s, human remains representing, at minimum, one individual were removed by unknown persons from an area near the Fish Hook River, close to the city of Park Rapids, in Hubbard County, MN. Subsequently, these human remains were relinquished to Alan Brew, a Professor at Bemidji State University. On November 15, 2007, the human remains were transferred to the Minnesota Indian Affairs Council (H437). No known individual was identified. The 69 associated funerary objects include navy blue, pink, white/cream seed beads and three sherds of a white and blue earthenware cup.

In August of 1971, human remains representing, at minimum, one individual were removed by Saint Cloud State University from an unspecified location on Knife Lake in Kanabec County, MN. In February of 2006, Saint Cloud State University transferred these human remains together with associated funerary objects to the Minnesota Indian Affairs Council (H417). No known individual was identified. The 3,876 associated funerary objects include one copper or brass ring associated with a hand phalanx, one ceramic button, one metal shank button, and 3,873 funerary objects consisting of seed beads, tubular beads, flat beads, black fabric, red fabric, brown fabric, metal pieces, leather fragments, coffin wood, and birch bark fragments.

In 2021, human remains representing, at minimum, one individual were removed from Ottertail County, MN. Construction workers fixing a damaged shed unearthed the human remains via a small trench. Local law enforcement responded to the scene and began an investigation. Locals who had heard of the incident contacted the Minnesota Indian Affairs Council. MIAC visited the site with law enforcement. Law Enforcement determined the human remains to be Native American and transferred them to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

In August of 1993, May and November of 1995, and July of 1996, human remains representing, at minimum, four individuals were removed by the Office of the State Archaeologist eroding from a bank along the Northeast shore of Otter Tail Lake, in Ottertail County, MN (site 21–OT–110, Peterson Burials). In 1993, 1995, and 1996, these human remains were transferred to the Minnesota Indian Affairs Council (H243, H293). No known individuals were identified. The 200 associated funerary objects include two thin metal bands (possibly belonging a wedding band); one quartz bipolar flake; one small buckle; and 196

funerary objects consisting of coffin hardware, wood, and nails; faunal remains; buttons; cloth fragments; and soil samples.

On October 26, 1995, human remains representing, at minimum, two individuals were removed during construction activities under a road near Lake Osakis in Todd County, MN. The Osakis Police Department were notified, and the human remains were turned over to the Ramsey County Medical Examiner's Office. On October 30, 1995, the human remains were transferred to the Minnesota Indian Affairs Council (H299). On January 11, 1996, additional human remains belonging to these individuals were transferred to the Minnesota Indian Affairs Council from the Office of the State Archaeologist following their investigation of the site. No known individuals were identified. The two associated funerary objects are patinated brass tinkers or jingle cones.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, folkloric, geographical, historical, oral traditional, and other relevant information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Minnesota Indian Affairs Council has determined that:

- The human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- The 4,197 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band) and the Red Lake Band of Chippewa Indians, Minnesota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the Minnesota Indian Affairs Council must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Minnesota Indian Affairs Council is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11689 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035946; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, San Juan Island National Historical Park, Friday Harbor, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service (NPS), San Juan Island National Historical Park (SAJH) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from San Juan County, WA.

DATES: Repatriation of the human remains in this notice may occur on or after July 3, 2023.

ADDRESSES: Elexis Fredy, Superintendent, San Juan Island National Historical Park, 650 Mullis Street, Suite 100, Friday Harbor, WA 98250, telephone (360) 378–2240, email Ext. 2223, email *elexis_fredy@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, SAJH. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by SAJH.

Description

In 1951, human remains representing, at minimum, three individuals were removed from the Garrison Bay Site within English Camp in San Juan County, WA, by the University of Washington during archeological field school excavations under the direction of Carroll Burroughs. The individuals were originally transferred to the Burke Museum, University of Washington and later transferred to the Seattle Jesuit Catholic University in 1974. In 1990 or 1991, the Seattle Jesuit Catholic University transferred the individuals to the Confederated Tribes of the Colville Reservation. On an unknown date, the Confederated Tribes of the Colville Reservation determined that the individuals were not affiliated with the Colville, and transferred physical custody to Eastern Washington University (EWU). In May 2022, the Burke Museum contacted SAJH about the individuals held at EWU and in August 2022, SAJH contacted EWU. They remain in the physical custody of EWU. No known individuals were identified. No associated funerary objects are present.

In 1970, 1971, and 1972, human remains representing, at minimum, nine individuals were removed from English Camp in San Juan County, WA, during joint archeological field school excavations by the University of Idaho and the University of Washington under direction of Dr. Roderick Sprague and Stephen Kenady. In 2007, two of these individuals were identified in the

University of Idaho's collections. On August 9, 2007, the University of Idaho transferred the two individuals to the NPS, Pacific West Region. On October 15, 2019, they were transported to the Washington Department of Archaeology and Historic Preservation for osteological examination. The other seven individuals were identified in the University of Idaho's teaching collections in 2015. On May 4, 2021, the University of Idaho transferred physical custody to the NPS. On the same day, NPS officials temporarily loaned these individuals to the Lummi Tribe of the Lummi Reservation to house the individuals at their curation facility. No known individuals were identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, geographical information, historical information, linguistics, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, SAJH has determined that:

- The human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Jamestown S'Klallam Tribe; Lower Elwha Tribal Community; Lummi Tribe of the Lummi Reservation; Port Gamble S'Klallam Tribe; Samish Indian Nation; Stillaguamish Tribe of Indians of Washington; Swinomish Indian Tribal Community; and the Tulalip Tribes of Washington.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, SAJH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. SAJH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11697 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035953; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Mono County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after July 3, 2023.

ADDRESSES: Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

Description

Human remains representing, at minimum, one individual were removed from Mono County, CA. On February 27, 2009, these human remains were donated to the Museum by Hebe Bartz. Included among the remains was a note that read: ''Indian skull found on a ranch near Yosemite, at that time owned by the Lundy family. Property known as the last irrigated ranch north of Yosemite.'' No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historic, and other information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Bishop Paiute Tribe; Bridgeport Indian Colony; and the Utu Utu Gwaitu Tribe of the Benton Paiute Reservation, California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Mono Lake Kootzaduka'a Tribe, a non-federally recognized Indian group.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11685 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035951; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Museum of Us, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Us intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Sacramento County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after July 3, 2023.

ADDRESSES: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 42, email *cmosley@museumofus.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Us. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Museum of Us.

Description

In 1932, the four cultural items were removed by Paul A. Walker from the Sacramento County home of Tom Cleanso, a Nisenan man, after his passing. Walker was an amateur archeologist and collector who worked both alone and with other amateur archeologists, and in collaboration with the University of California and Sacramento Junior College. Over the course of his life, Walker amassed an extensive archeological collection from California's Central Valley, as well as smaller collections from Northern and Southern California, and from outside of California. In 1968, Walker's archeological collection was acquired by the San Diego Museum of Man (now Museum of Us) through a purchase/donation transaction with Walker's widow, Bessie B. Walker. The four unassociated funerary objects are four *Haliotis* ornaments.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, folkloric, geographical, historical, kinship, linguistic, oral traditional, other relevant information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Museum of Us has determined that:

- The four cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the Museum of Us must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Museum of Us is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11692 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035952; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Museum of Us, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Us intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Tennessee and Mississippi.

DATES: Repatriation of the cultural items in this notice may occur on or after July 3, 2023.

ADDRESSES: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 42, email *cmosley@museumofus.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Us. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Museum of Us.

Description

At an unknown date, one cultural item was removed from an unknown county in the State of Mississippi. In 1939, George L. Hyatt donated the item to the San Diego Museum (now Museum of Us). The unassociated funerary object is an axe head.

At an unknown date, three cultural items were removed from Hickman County, TN. The items were found in a stone-lined grave situated at the junction of the Piney and Duck Rivers. In 1957, George A. Leupold donated the items to the San Diego Museum of Man (now Museum of Us). The three unassociated funerary objects are one adze blade, one double-headed axe head, and one biconcave discoidal.

At an unknown date, two cultural items were removed from an unknown county in the State of Tennessee. Subsequently, Geoffrey Smith, a retired physician and prolific collector of archeological and historic items, acquired these items from the E. Lorenz Borenstein Gallery. In 2010, Smith donated the items to the Museum of Man (now Museum of Us), along with a large Latin American archeological collection. The two unassociated funerary objects are one conch shell mask, and one conch shell dipper.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Museum of Us has determined that:

- The six cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 3, 2023. If competing requests for repatriation are received, the Museum of Us must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Museum of Us is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: May 24, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11693 Filed 5–31–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1259]

Certain Toner Supply Containers and Components Thereof (I); Notice of Commission Determination To Institute a Modification Proceeding; Schedule and Procedure for the Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to institute a modification proceeding in the above-captioned investigation. The Commission has also determined to delegate the modification proceeding to the Chief Administrative Law Judge (''ALJ'') to designate a presiding ALJ to make all necessary factual and legal findings as to infringement and to issue a recommended determination.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. 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, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, ''Complainants''). *See* 86 FR 19284–86. The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain toner supply containers and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,209,667 (''the '667 patent''); 10,289,060 (''the '060 patent''); 10,289,061 (''the '061 patent''); 10,295,957 (''the '957 patent''); 10,488,814 (''the '814 patent''); 10,496,032 (''the '032 patent''); 10,496,033 (''the '033 patent''); 10,514,654 (''the '654 patent''); 10,520,881 (''the '881 patent''); 10,520,882 (''the '882 patent''); 8,565,649; 9,354,551; and 9,753,402. *Id.* The complaint further alleges that a domestic industry exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of toner supply containers and components thereof by reason of infringement of certain claims the '667 patent, the '060 patent, the '061 patent, the '957 patent, the '814 patent, the '032 patent, the '033 patent, the '654 patent, the '881 patent, and the '882 patent (collectively, ''the Asserted Patents''). *Id.*

The notice of investigation (''NOI'') names twenty-six respondents, including twenty-two later found in default: (1) Sichuan XingDian Technology Co., Ltd. (''Sichuan XingDian'') of Sichuan, China; (2) Sichuan Wiztoner Technology Co., Ltd. (''Sichuan Wiztoner'') of Sichuan, China; (3) Copier Repair Specialists, Inc. (''Copier Repair Specialists'') of Lewisville, Texas; (4) Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (''Digital Buyer'') of Los Angeles, California; (5) Ink Technologies Printer Supplies, LLC (''Ink Tech'') of Dayton, Ohio; (6) Kuhlmann Enterprises, Inc. d/b/a Precision Roller (''Precision Roller'') of Phoenix, Arizona; (7) NAR Cartridges of Burlingame, California; (8) Zhuhai Henyun Image Co., Ltd. (''Zhuhai Henyun'') of Zhuhai, China; (9) Zinyaw LLC d/b/a TonerPirate.com and Supply District (''Zinyaw'') of Houston, Texas; (10) Do It Wiser, Inc. d/b/a Image Toner (''Do It Wiser'') of Wilmington, Delaware; (11) MITOCOLOR INC. (''MITOCOLOR'') of Rowland Heights, California; (12) Anhuiyatengshang maoyouxiangongsi (''Yatengshang'') of Ganyuqu, China; (13) ChengDuXiangChangNanShiYouSheBei YouXianGongSi (''ChengDuXiang'') of SiChuanSheng, China; (14) Hefeierlandianzishangwuyouxiangongsi (''Erlandianzishang'') of Chengdushi, China; (15) Xianshi yanliangqu canqiubaihuodianshanghang (''CJ-us'') of Shanxisheng, China; (16) Ninestar Corporation of Guangdong, China; (17) Ninestar Image Tech Limited (''Ninestar Image'') of Guangdong, China; (18) Ninestar Technology Company, Ltd. (''Ninestar Tech'') of Chino, California (where Ninestar Corporation, Ninestar Image, and Ninestar Tech are collectively, ''Ninestar Respondents''); (19) Static Control Components, Inc. (''Static Control'') of Sanford, North Carolina; (20) Easy Group, LLC (''Easy Group'') of Irwindale, California; (21) LD Products, Inc. (''LD Products'') of Long Beach, California; and (22) The Supplies Guys, Inc. (''Supplies Guys'') of Lancaster, Pennsylvania; (collectively, ''Defaulting Respondents''). *Id.* The NOI also names the following respondents who were previously terminated from the investigation: General Plastic Industrial Co. Ltd. (''General Plastic'') of Taichung, Taiwan; Katun Corporation (''Katun'') of Minneapolis, Minnesota; Sun Data Supply, Inc. (''Sun Data Supply'') of Los Angeles, California; and Shenzhenshi Keluodeng Kejiyouxiangognsi (''KenoGen'') of Guangdong, China. *Id.* The Office of Unfair Import Investigations (''OUII'') was also a party to the investigation. *Id.*

The complaint and NOI were later amended to correct the name of originally-identified respondent Do It Wiser, LLC d/b/a Image Toner to Do It Wiser, Inc. d/b/a Image Toner. Order No. 5 (May 13, 2021), *unreviewed by* 86 FR 29292–93 (June 1, 2021).

The Commission found the Ninestar Respondents, Static Control, Easy Group, LD Products, and Supplies Guys in default. Order No. 7 (June 22, 2021), *unreviewed by* Notice (July 6, 2021). The Commission also found respondents Sichuan XingDian, Sichuan Wiztoner, Copier Repair Specialists, Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, Zhuhai Henyun, Zinyaw, Do It Wiser, MITOCOLOR, Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us in default. Order No. 18 (Sept. 28, 2021), *unreviewed by* Notice (Oct. 27, 2021). The Commission terminated respondents General Plastic, Katun, and Sun Data Supply from the investigation pursuant to consent order stipulations. Order No. 10 (July 1, 2021), *unreviewed by* Notice (July 19, 2021). The Commission further terminated respondent KenoGen from the investigation based on partial withdrawal of the complaint. Order No. 13, *unreviewed by* Notice (Aug. 25, 2021).

The Commission also terminated investigation as to certain claims of the Asserted Patents. Order No. 11, *unreviewed by* Notice (Aug. 25, 2021).

On October 1, 2021, Canon filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the presiding ALJ recommend that the Commission issue a general exclusion order (''GEO'') and cease and desist orders (''CDOs'') against certain respondents and set a 100 percent bond for any importations of infringing goods during the period of Presidential review.

On May 15, 2022, the presiding Chief ALJ issued an initial determination (''ID'') granting Canon's motion and finding violations of section 337 by the Defaulting Respondents with respect to certain asserted patent claims. The Chief ALJ recommended that the Commission: (i) issue a GEO; (ii) issue CDOs against respondents Ninestar Tech, Static Control, Copier Repair Specialists, Digital Buyer, Do It Wiser, Easy Group, Ink Tech, Precision Roller, LD Products, NAR Cartridges, Supplies Guys, MITOCOLOR, Zinyaw, Ninestar Corporation, Ninestar Image, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang; and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review.

On August 1, 2022, the Commission determined to affirm the ID's determination of a violation of section 337 with respect to Defaulting Respondents. 87 FR 48039–41 (Aug. 5, 2022). Accordingly, the Commission issued: (1) a GEO prohibiting the unlicensed entry of certain toner supply containers and components thereof that infringe one or more of claim 1 of the '667 patent; claim 1 of the '060 patent; claim 1 of the '061 patent; claim 1 of the '957 patent; claims 1 and 12 of the '814 patent; claims 50, 58, and 61 of the '032

patent; claims 1 and 13 of the '033 patent; claims 46 and 50 of the '654 patent; claims 1, 10, and 13 of the '881 patent; or claims 1 and 8 of the '882 patent; and (2) CDOs against respondents Ninestar Tech, Static Control, Copier Repair Specialists, Digital Buyer, Do It Wiser, Easy Group, Ink Tech, Precision Roller, LD Products, NAR Cartridges, Supplies Guys, MITOCOLOR, Zinyaw, Ninestar Corporation, Ninestar Image, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang. *Id.*

On April 25, 2023, respondents Katun and General Plastic filed a petition pursuant to Commission Rule 210.76 (19 CFR 210.76) to modify the GEO in order to clarify that the order does not cover certain Katun and General Plastic redesigned toner supply containers (''New Katun Containers''). Katun and General Plastic also assert that if Complainants ''seek to extend language of the claims of the Asserted Patents to cover the New Katun Containers, such an expansion of scope is impermissible and renders the Asserted Patents invalid.'' Pet. at 2–3, 29–30.

On May 5, 2023, Complainants filed an opposition to Katun's and General Plastic's petition for a modification of the GEO. Complainants argue that Katun and General Plastic have not shown why the redesign could not have been adjudicated in the original investigation, and thus there is no basis to conclude the redesign constitutes a changed condition of fact. Complainants further argue that Katun and General Plastic do not make a plausible showing that the New Katun Containers do not infringe the Asserted Patents, and accordingly, no modification is required. Complainants argue that if a modification proceeding is instituted, then it should be referred to an ALJ for findings of fact and an initial determination. OUII did not file a response to the petition.

The Commission has determined that the petition complies with the requirements for institution of a modification proceeding under Commission Rule 210.76(a)(1) (19 CFR 210.76(a)(1)) to determine whether Katun and General Plastic's redesigned New Katun Containers infringe one or more of claim 1 of the '667 patent; claim 1 of the '060 patent; claim 1 of the '061 patent; claim 1 of the '957 patent; claims 1 and 12 of the '814 patent; claims 50, 58, and 61 of the '032 patent; claims 1 and 13 of the '033 patent; claims 46 and 50 of the '654 patent; claims 1, 10, and 13 of the '881 patent; or claims 1 and 8 of the '882 patent. The modification proceeding shall not include any validity issues because an invalidity challenge is not a proper basis to modify an exclusion order. *Mayborn Group, Ltd.* v. *Int'l Trade Comm'n,* 965 F.3d 1350 (Fed. Cir. 2020). Further, the consent orders issued against Katun and General Plastic prohibit them from challenging validity of the relevant patents. 19 CFR 210.21(c)(4)(vi); Consent Order to Katun and General Plastic at ¶ 9 (July 19, 2021). Accordingly, the Commission has determined to institute a modification proceeding and refer the petition to the Chief ALJ as detailed in the accompanying Order.

The assigned ALJ will make findings, may request briefing, and will issue a recommended determination (''RD'') to the Commission within six months of publication of this notice in the **Federal Register**. Should the ALJ determine that more time is necessary, the deadline may be extended for good cause shown. The Commission will issue a modification opinion within 90 days of receipt of the ALJ's RD unless the Commission otherwise orders. The following entities are named as parties to the proceeding: (1) Canon Inc; (2) Canon U.S.A., Inc.; (3) Canon Virginia, Inc; (4) Katun; (5) General Plastic; and (6) OUII.

The Commission vote for this determination took place on May 25, 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 26, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–11658 Filed 5–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Fourth Review)]

Folding Gift Boxes From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2023. To be assured of consideration, the deadline for responses is July 3, 2023. Comments on the adequacy of responses may be filed with the Commission by August 10, 2023.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 8, 2002, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of folding gift boxes from China (67 FR 864). Commerce issued a continuation of the antidumping duty order on imports of folding gift boxes from China following Commerce's and the Commission's first five-year reviews, effective May 18, 2007 (72 FR 28025), second five-year reviews, effective March 5, 2013 (78 FR 14269), and third five-year reviews, effective July 11, 2018 (83 FR 32073). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include

information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Like Product* as certain folding gift boxes for resale, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of certain folding gift boxes.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 10, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–570, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation

of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet*, where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in packages and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in packages and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in packages and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–11467 Filed 5–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–026]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 6, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–1330 (Review)(Dioctyl Terephthalate (DOTP) from South Korea). The Commission currently is scheduled to complete and file its determinations and views of the Commission on June 26, 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 30, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–11798 Filed 5–30–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Fourth Review)]

Tin- and Chromium-Coated Steel Sheet From Japan; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2023. To be assured of consideration, the deadline for responses is July 3, 2023. Comments on the adequacy of responses may be filed with the Commission by August 10, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 28, 2000, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of tin- and chromium-coated steel sheet from Japan (65 FR 52067). Commerce issued a continuation of the antidumping duty order on imports of tin- and chromium-coated steel sheet from Japan following Commerce's and the Commission's first five-year reviews, effective July 21, 2006 (71 FR 41422), second five-year reviews, effective June 12, 2012 (77 FR 34938), and third five-year reviews, effective July 11, 2018 (83 FR 32074). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first, second, and third five-year review determinations, the Commission defined the *Domestic Like Product* as tin- and chromium-coated steel sheet corresponding to Commerce's definition of the scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of tin- and chromium-coated steel sheet.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 10, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–571, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse

inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandis*e, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have

occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–11465 Filed 5–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1374–1376 (Review)]

Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on citric acid and certain citrate salts from Belgium, Colombia, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2023. To be assured of consideration, the deadline for responses is July 3, 2023. Comments on the adequacy of responses may be filed with the Commission by August 15, 2023.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch (202–205–2387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 25, 2018, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of citric acid and certain citrate salts from Belgium, Colombia, and Thailand (83 FR 35214). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Belgium, Colombia, and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of citric acid and certain citrate salts corresponding to Commerce's scope, including crude calcium citrate, citric acid, sodium citrate, and potassium citrate in all chemical and physical forms.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of citric acid and certain citrate salts.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is July 25, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter

as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 15, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–569, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject

imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in pounds dry weight and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds dry weight and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds dry weight and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–11496 Filed 5–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1103 (Third Review)]

Certain Activated Carbon From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on certain activated carbon from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2023. To be assured of consideration, the deadline for responses is July 3, 2023. Comments on the adequacy of responses may be filed with the Commission by August 15, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 27, 2007, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of certain activated carbon from China (72 FR 20988). Commerce issued a continuation of the antidumping duty order on imports of certain activated carbon from China following Commerce's and the Commission's first five-year reviews, effective March 18, 2013 (78 FR 16654), and second five-year reviews, effective July 12, 2018 (83 FR 32269). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Like Product* to be certain activated carbon, coextensive with Commerce's scope of the investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all known producers of certain activated carbon, with the exception of one firm, California Carbon, which was excluded pursuant to the related parties provision. In the full first five-year review and the expedited second five-year review, the Commission defined the *Domestic Industry* as all known domestic producers of certain activated carbon.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the

information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–568, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have

expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–11464 Filed 5–31–23; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public), which will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, on July 6 and 7, 2023.

DATES: Thursday, July 6, 2023, from 9 a.m. to 5 p.m., and Friday, July 7, 2023, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, on Thursday, July 6, 2023, from 9 a.m. to 5 p.m. and Friday, July 7, 2023, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2023 Pension (EA–2L) and Basic (EA–1) Examinations in order to make recommendations relative thereto, including the minimum acceptable pass scores. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2023 Pension (EA–2F) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal

Advisory Committee Act, 5 U.S.C. 1009, that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the May 2023 EA–2L and EA–1 Examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on July 6, 2023, and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should contact the Designated Federal Officer at *nhqjbea@irs.gov* and include the written text or outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. Persons who wish to attend the public session should contact the Designated Federal Officer at *nhqjbea@irs.gov* to obtain access instructions. Notifications of intent to make an oral statement or to attend the meeting must be sent electronically to the Designated Federal Officer by no later than June 30, 2023. In addition, any interested person may file a written statement for consideration by the Joint Board and the Advisory Committee by sending it to *nhqjbea@irs.gov.*

Dated: May 25, 2023.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2023–11573 Filed 5–31–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act

On May 24, 2023, the Department of Justice filed a Complaint and concurrently lodged a proposed Consent Decree with the United States District Court for the District of Pennsylvania, Western District, in a lawsuit entitled *United States, et. al.* v. *Eastman Chemical Resins, Inc., et. al.,* Civil Action No. 2:23–cv–00867–MJH.

The Complaint concerns violations at a hydrocarbon resins manufacturing facility located at 2200 State Rt. 87 in Jefferson Hills, Pennsylvania. The United States and Pennsylvania Department of Environmental Protection (''PADEP'') filed this lawsuit alleging multiple claims against Eastman Chemical Resins, Inc. (''Eastman''), the former owner and operator of the facility, and Synthomer Jefferson Hills LLC (''Synthomer'') current owner and operator of the facility and required party under Fed. R. Civ. P. 19(a): (1) claims under the Clean Water Act (''CWA'') for unpermitted discharges, discharges of harmful quantities of oil, permit violations, and deficiencies in the facility's Federal Response Plan and Spill Prevention, Control, and Countermeasure Plan; (2) claims under the Clean Air Act (''CAA'') for violations of the risk management program regulations; (3) claims under the Resource Conservation and Recovery Act (''RCRA'') violations of Subtitle C and regulations issued under the delegated state program relating to management of hazardous waste; and (4) corresponding claims under the Pennsylvania Clean Streams Law (''PCSL''), Pennsylvania Solid Waste Management Act (''PSWMA''), and Pennsylvania Hazardous Waste Management Regulations (''PHWMR'').

The proposed Consent Decree will resolve all civil claims alleged by the United States and PADEP in the filed complaint. Under the proposed Consent Decree, Synthomer will perform injunctive relief, including: (1) conducting a third-party environmental audit; (2) implementing effluent limit violations response requirements; (3) performing facility specific work and repairs; (4) completing comprehensive stormwater and groundwater control plans; (4) implementing a RCRA-based training program and daily inspection requirements. In addition, Eastman will pay a $2.4 million civil penalty to be split between the United States and PADEP.

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, et. al.* v. *Eastman Chemical Resins, Inc., et. al.,* D.J. Ref. No. 90–5–2–1–09001/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed 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 $60.75 (25 cents per page reproduction cost) for the proposed Consent Decree payable to the United States Treasury. For a paper copy without the appendices, the cost is $14.25.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–11657 Filed 5–31–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0312]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Survey of State Criminal History Information Systems (SSCHIS)

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, 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 was published in the **Federal Register** on March 21, 2023, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received no comments.

DATES: Comments are encouraged and will be accepted for 30 days until July 3, 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: Devon Adams, Deputy Director, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *devon.adams@usdoj.gov;* telephone: 202–305–0765).

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.

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 1121–0312. 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 collection approved collection.

(2) *The Title of the Form/Collection:* Survey of State Criminal History Information Systems (SSCHIS).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is N/A. The applicable component within the Department of Justice is the Bureau of Justice Statistics, 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 SSCHIS report, the most comprehensive data available on the collection and maintenance of information by state criminal history record systems, describes the status of such systems and record repositories on a biennial basis. Data collected from state record repositories serves as the basis for estimating the percentage of total state records that are immediately available through the FBI's Interstate Identification Index (III), and the percentage of arrest records that include dispositions. Other data presented include the number of records maintained by each state, the percentage of automated records in the system, and the number of states participating in the National Fingerprint File and the National Crime Prevention and Privacy Compact which authorizes the interstate exchange of criminal history records for noncriminal justice purposes. The SSCHIS also contains information regarding the timeliness and completeness of data in state record systems and procedures employed to improve data quality.

(5) *Obligation to Respond:* Voluntary.

(6) *Total Estimated Number of Respondents:* 56.

(7) *Estimated Time per Respondent:* 4 hours.

(8) *Frequency:* Biennially.

(9) *Total Estimated Annual Time Burden:* 224 hours.

(10) *Total Estimated Annual Other Costs Burden:* $51,839.

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 20530.

Dated: May 23, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–11594 Filed 5–31–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respirable Crystalline Silica Standards for General Industry

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The standards require covered employers to monitor employee exposure to respirable crystalline silica, to establish either regulated areas or a written access

control plan, to conduct medical surveillance, and to establish and maintain accurate records of employee exposure to respirable crystalline silica and employee medical records. These records will be used by employers, workers, physicians and the Government to ensure that workers are not being harmed by exposure to respirable crystalline silica. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2023 (88 FR 17027).

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–OSHA.

Title of Collection: Respirable Crystalline Silica Standards for General Industry.

OMB Control Number: 1218–0266.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 764,318.

Total Estimated Number of Responses: 17,203,330.

Total Estimated Annual Time Burden: 7,796,128 hours.

Total Estimated Annual Other Costs Burden: $261,709,625.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–11701 Filed 5–31–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hexavalent Chromium Standards for General Industry

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The standard requires employers to monitor employee exposure to Hexavalent Chromium, to provide medical surveillance, and to establish and maintain accurate records of employee exposure to Hexavalent Chromium and employee medical records. These records will be used by employers, employees, physicians and the Government to ensure that employees are not being harmed by exposure to Chromium. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 2, 2023 (88 FR 13151).

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–OSHA.

Title of Collection: Hexavalent Chromium Standards for General Industry.

OMB Control Number: 1218–0252.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 78,321.

Total Estimated Number of Responses: 923,898.

Total Estimated Annual Time Burden: 429,293 hours.

Total Estimated Annual Other Costs Burden: $43,439,901.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–11700 Filed 5–31–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 July 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Section 115(e) of the Mine Act, 30 U.S.C. 825(e), requires the Secretary to publish regulations which provide that mine rescue teams be available for rescue and recovery work to each underground coal or other mine in the event of an emergency. In addition, the costs of making advance arrangements for such teams are to be borne by the operator of each mine. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 12, 2023 (88 FR 2134).

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–MSHA.

Title of Collection: Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements.

OMB Control Number: 1219–0144.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 362.

Total Estimated Number of Responses: 30,436.

Total Estimated Annual Time Burden: 5,106 hours.

Total Estimated Annual Other Costs Burden: $265.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2023–11699 Filed 5–31–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Medical Travel Refund Request (OWCP–957)

ACTION: Revision of a previously approved collection.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, ''Medical Travel Request.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 31, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at (202) 354–9660 (this is not a toll-free number) or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Room S–3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at (202) 354–9660 (this is not a toll-free number) or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP reimburse beneficiaries for travel expenses for covered medical treatment. In order to determine whether amounts requested as travel expenses are appropriate, OWCP must receive certain data elements, including the signature of the physician for medical expenses claimed under the BLBA. Form OWCP–957 is the standard format for the collection of these data elements. The regulations implementing these three statutes allow

for the collection of information needed to enable OWCP to determine if reimbursement requests for travel expenses should be paid. This information collection is currently approved for use through June 30, 2021.

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 it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0037.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Type of Review: Extension.

Title of Collection: Medical Travel Refund Request.

Form: Medical Travel Refund Request (OWCP–957).

OMB Control Number: 1240–0037.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 37,132.

Frequency: On occasion.

Total Estimated Annual Responses: 356,875.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 53,351.

Total Estimated Annual Other Cost Burden: $1,776,158.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–11625 Filed 5–31–23; 8:45 am]

BILLING CODE 4510–CR–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–073; NRC–2023–0051]

GE-Hitachi Nuclear Energy Americas, LLC; Nuclear Test Reactor; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on March 22, 2023, regarding an environmental assessment and finding of no significant impact for the consideration of renewal of Facility License No. R–33, held by the GE-Hitachi Nuclear Energy Americas, LLC, for the continued operation of the Nuclear Test Reactor. This action is necessary to correct the radioactivity concentration units used.

DATES: June 1, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0051 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–2023–0051. 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.*
- **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: Duane Hardesty, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3724; email: *Duane.Hardesty@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** (FR) on March 22, 2023, in FR Doc. 2023–05876, on page 17278, in the first column, third line from the bottom of the first full paragraph, ''4.73 Ci/L, gross beta at 1.6 pCi/L'' is corrected to read ''4.73 picoCuries/gram (pCi/g), gross beta at 1.6 pCi/g.''

Dated: May 25, 2023.

For the Nuclear Regulatory Commission.

Joshua M. Borromeo,

Chief, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11599 Filed 5–31–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–76 and CP2022–92; Order No. 6524]

Competitive Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is extending the comment deadline in Docket Nos CP2022–76 and CP2022–92. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 5, 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: On May 19, 2023, the Postal Service filed notice that the terms of the existing Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contracts, have been amended.[1] The Postal Service states that the proposed amendments will not materially affect cost coverage and therefore did not include revised supporting financial documentation or financial certification. Notices at 1.

The Commission has reviewed the proposed amendments' terms and has determined that the amendments revise material sections of the contracts that may affect cost coverage. The Commission issued a notice initiating the instant dockets on May 22, 2023, with the deadline for filing comments on May 30, 2023.[2] The Commission has requested the Postal Service file supporting financial documentation reflecting the amendments' revisions.[3]

To give all interested parties sufficient time to review the responses to the information requests and formulate their comments, the Commission hereby extends the deadline for filing comments to June 5, 2023.

It is ordered:

1. Comments by interested persons are due by June 5, 2023.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–11646 Filed 5–31–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] Docket No. CP2022–76, USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 13, Filed Under Seal, May 19, 2023; Docket No. CP2022–92, USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 18, Filed Under Seal, May 19, 2023 (Notices).

[2] *See* Docket No. CP2022–76, *et al.,* Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, May 22, 2023.

[3] *See* Docket No. CP2022–76, Chairman's Information Request No. 2, May 25, 2023 (CHIR No. 2); Docket No. CP2022–92, Chairman's Information Request No. 1, May 25, 2023 (CHIR No. 1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97586; File No. SR–ICC–2023–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's New Initiatives Approval Policy and Procedural Framework

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on May 12, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Credit LLC (''ICC'') proposes a rule change to update the ICC New Initiatives Approval Policy and Procedural Framework (''NIA Policy''). This change does not require any revisions to the ICC Clearing Rules (''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NIA Policy sets forth ICC's policies and procedures for the review and approval of certain new initiatives to be offered or implemented by ICC (''New Initiatives''). New Initiatives are any new project approved by the Steering Committee (*i.e.,* an ICC management committee responsible for prioritizing the implementation of initiatives and monitoring and guiding delivery) and identified by the New Initiative Approval Committee (the ''NIAC'') as requiring its approval prior to launch. The intention of the NIA Policy is to notify all relevant departments of the introduction of the New Initiative, provide for information sharing between departments, ensure prior to the launch of a New Initiative that all required governance and regulatory filings have been completed and New Initiative risks are considered, and establish requirements for the pre-launch verification and testing of the New Initiative.

ICC proposes to update its NIA Policy with the addition of Exhibit B, Approvals Matrix Review and Approval Process. ICC believes that such a change will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed rule change is described in detail as follows.

The addition of the procedures set forth in Exhibit B, Approvals Matrix Review and Approval Process to Section IV Procedural Framework—Activity Steps is designed to formalize ICC's current New Initiatives review and approval process. Specifically, Exhibit B formalizes and describes ICC's procedures regarding the use of an ''Approvals Matrix'' in its review and approval of a given New Initiative. The lifecycle of an Approvals Matrix for a given New Initiative is set forth in Exhibit B and, in general, consists of three activity steps described below.

The first step is ''Creation'' of the Approvals Matrix. Upon the request of the NIAC Chair, the ICC Legal Department prepares an initial draft Approvals Matrix related to the particular New Initiative. An initial draft may be requested prior to the completion of the New Initiative, and in any case prior to ICC being granted all required approvals. Should the initial draft be requested prior to being granted all required approvals, a complete list of requires approvals (both granted and to be granted) will be incorporated in the Approvals Matrix. Furthermore, the Approvals Matrix will include the following information: (i) items requiring approval (*e.g.,* ICC Clearing Rules, ICC procedures), (ii) required filings/approvals related to each item (*e.g.,* ICC Risk Committee recommendation to the ICC Board of Managers, ICC Board of Managers, Commodity Futures Trading Commission (''CFTC''), Securities Exchange Commission (''SEC'')), and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(iii) the applicable dates such requests were made, regulatory filings were filed and/or approvals were granted. The ICC Compliance Department and ICC Risk Oversight Officer (''ROO'') both review the initial draft Approvals Matrix and provide their feedback and confirmation that the information captured in the Approvals Matrix is accurate.

The purposed second step is ''Review/Maintenance'' of the Approvals Matrix. With respect to a particular New Initiative, the NIAC Chair may include a review of the applicable Approvals Matrix at NIAC meetings and must include a review of the Approvals Matrix in the relevant Pre-Launch Verification meeting.[3] Should either type of review result in modifications to the applicable Approvals Matrix, the ICC Legal Department will update the applicable Approvals Matrix with the modifications.

The purposed third step is ''Finalization'' of the Approvals Matrix. Prior to Pre-Launch Verification of the given New Initiative by the NIAC, the NIAC Chair will confirm with the ICC Legal Department that all required approvals have been received, including by the ICC Compliance Department and the ROO.

Furthermore, ICC proposes to update its NIA Policy with the addition of Exhibit C, Risk Assessment Review and Approval Process to Section IV Procedural Framework—Activity Steps. Exhibit C is designed to formalize ICC's current New Initiatives risk review and approval process. Proposed Exhibit C provides that a ''Risk Assessment'' associated with a given New Initiative must be created, maintained and updated in accordance with procedures include in Exhibit C.[4]

The purposed first step is ''Creation'' which describes the initial risk assessments performed by the ICC President and ICC Functional Area Heads,[5] which is documented on the Risk Assessment of the applicable New Initiative. The draft Risk Assessment document is then reviewed/edited by all Functional Area Heads. Each Functional Area Head considers the universe of key risks for their functional area when completing the Risk Assessment, and documents in the Risk Assessment their view on the main risks and any related mitigations. For each of the main risks identified, the following information is provided; a description of the risk, a description of any expected/implemented risk mitigations and a High/Medium/Low rating of the residual risk after considering the expected/implemented risk mitigations. Each Functional Area Head includes references to any work logs or other supporting materials used by the Functional Area Head when performing the Risk Assessment. All Functional Area Heads return their section of the initial draft Risk Assessment to the NIAC Chair. The NIAC Chair compiles all returned sections of the initial draft Risk Assessment into a single document. The NIAC Chair circulates the compiled initial draft Risk Assessment to all Functional Area Heads. Each Functional Area Head reviews all the risks identified in the initial draft Risk Assessment by the other Functional Area Heads, provides any revisions/additions to the document, and provides a residual risk rating for each identified risk. At the discretion of the NIAC Chair, the review and residual risk rating of each Functional Area Head's identified risks by the other Functional Area Heads can be performed collaboratively during a NIAC meeting. The NIAC Chair circulates to the Functional Area Heads the finalized initial draft of the Risk Assessment.

The purposed second step is ''Review/Maintenance'' of the Risk Assessment. In NIAC meetings pertaining to the relevant New Initiative, the NIAC Chair may include a review of the Risk Assessment and must include a review of the Risk Assessment in the Pre-Launch Verification meeting. Functional Area Heads may adjust their risk ratings as mitigation plans evolve to eliminate or reduce risk. Following any review of the Risk Assessment (whether in NIAC meetings or otherwise), the NIAC Chair coordinates the update and re-circulation of the Risk Assessment to the Functional Area Heads. The NIAC Chair will date or mark the Risk Assessment accordingly to indicate what is the most current version of the Risk Assessment as it moves through the new initiatives process.

The purposed third step is ''Finalization'' of the Risk Assessment. During the Pre-Launch Verification NIAC meeting for the given New Initiative, the NIAC reviews and discusses the latest Risk Assessment and residual risk ratings; any further revisions are noted to the NIAC Chair prior to the NIAC voting to approve the New Initiative. After the Pre-Launch Verification NIAC meeting for the given New Initiative, the NIAC Chair circulates to the NIAC the final Risk Assessment and the Functional Area Heads provide their sign-off via email to the NIAC Chair.

Furthermore, ICC proposes to update Section IV.A. of the NIA Policy by changing the name of Step 1 from ''Submission'' to ''Creation''. The purpose of this minor change is to better describe ICC's actual process, which is first the creation of a new project proposal by the ICC Steering Committee, which is subsequently submitted to the NIAC for review pursuant to the NIA Policy.

In addition to the forgoing proposed modifications to the NIA Policy, ICC also proposes to formalize a series of non-material updates to the NIA Policy which were reviewed and approved by the NIAC in 2019 and 2020. Such proposed changes, which are described below, concern the administration of ICC and were made to update the NIA Policy to reflect changes in ICC's officer positions and titles which were made within the organization.

In 2019 the NIAC approved changes to the NIA Policy[6] to update the composition of the NIAC in response to changes to officer positions and titles made within ICC. Specifically, revisions were made to Section II.G., ''New Initiative Approval Committee'', to remove references of two out-of-date ICC officer titles (''Senior Director, Products and Services'' and ''Head of Special Projects'') from the list of individuals comprising the NIAC. In addition, as the Head of Special Projects at ICC use to serve as the Chairman of the NIAC, Section II.G. also was revised to indicate that the Chairman of the NIAC will no longer automatically be the Head of Special Projects as such position no longer exists within ICC. Rather, Section II.G. was modified to indicate that the Chair of the NIAC will be the individual so designated. In addition, Section II.H., which defines the ''New Initiative Approval Committee Chair,'' was modified to delete the identification of the ''Head of Special Projects'' as that officer title no longer exists at ICC, and to insert the new definition of ''the individual designated to serve as the Chair of the New Initiative Approval Committee by ICE Clear Credit management.''

[3] The purpose of the Pre-Launch Verification meeting, with respect to a particular New Initiative, is to review the applicable Approvals Matrix, the risk assessments and any post-launch stipulations in advance of the approval of the New Initiative.

[4] A Risk Assessment is a document (in the form of the template attached as Attachment B to the NIA Policy) reviewed by the NIAC that describes key risks identified by the ICC Functional Area Heads and includes mitigation plans, residual impact ratings and other comments.

[5] ICC Functional Area Heads include the General Counsel, Chief Compliance Officer, Chief Operating Officer, Chief Risk Officer and Head of ICC Technology.

[6] Version 2.1 of the NIA Policy was reviewed and approved by the NIAC on December 12, 2019.

Furthermore, Section III.B. of the NIA Policy which identified the ''Head of Special Projects'' as serving at the NIAC Chair was deleted and the remainder of Section III was re-lettered to reflect the deletion of Section III.B. Similarly, the outdated title ''Head of Special Projects'' was removed from Attachment C and Attachment F to the NIA Policy, as the title is no longer in use at ICC.

In 2020 the NIAC approved additional changes to the NIA Policy [7] to correct Attachment D which contains the NIAC Charter. Specifically, Section III, ''Membership'' of Attachment D was modified to indicate that the Chair of the NIAC will be designated by ICC management. Similarly, Exhibit A to Attachment D which lists the member of the NIAC was modified to delete the ''Head of Special Projects'' as the NIAC Chair and modify the definition of the ''Committee Secretary'' to indicate that such position will be designated by the NIAC Chair rather than the outdated ''Head of Special Projects.''

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [8] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed additional procedural details to ICC's NIA Policy included in the proposed rule change are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[9] because ICC believes that the proposed additional procedural details to ICC's NIA Policy enhances policies, practices, and procedures with respect to the New Initiatives. Such sound policies, practices, and procedures are an important component of ICC's ability to comply with these requirements because disruptions to operations resulting from a new offering or implementation can impair the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[10] In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[11] Rule 17Ad–22(e)(17)(i) [12] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in relevant part, manage its operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls. The proposed rule change provides additional procedural details to ICC's NIA Policy regarding the Approvals Matrix review and approval process, and the Risk Assessment review and approval process. Such changes will enhance ICC's implementation of New Initiatives and ICC believes such procedures will reduce the likelihood of a disruption in its operations from a New Initiative. Moreover, the documentation of ICC's procedural process will improve ICC's ability to identify sources of operational risk and minimize them through the development of appropriate systems, policies, procedures, and controls consistent with the requirements of Rule 17Ad–22(e)(17)(i).[13]

Furthermore, the proposed rule is consistent with the requirements of Rule 17Ad–22(e)(2)(i) and (v) [14] which requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The non-material changes approved by the NIAC in 2019 and 2020 to update the NIA Policy to reflect changes to ICC's officer positions and titles that were made within the organization are consistent with the requirement to maintain clear and transparent governance arrangements, and with the requirement to specify clear and direct lines of responsibility. Such changes improve the accuracy and transparency of ICC's governance arrangements and improve the clarity of the lines of responsibility. In ICC's view, the proposed changes are therefore consistent with the requirements of Rule 17Ad–22(e)(2)(i) and (v).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed change to update ICC's NIA Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[7] Version 2.1.1. of the NIA Policy was reviewed and approved by the NIAC on March 04, 2020.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] *Id.*

[11] 17 CFR 240.17Ad–22.

[12] 17 CFR 240.17Ad–22(e)(17)(i).

[13] *Id.*

[14] 17 CFR 270.17Ad–22(e)(2)(i) and (v).

[15] *Id.*

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2023–006 on the subject line.

Paper Comments

Send paper comments in triplicate to, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2023–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–ICC–2023–006 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11612 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97579; File No. SR–CBOE–2023–027]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.[3] Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to Cboe Options Top, (ii) adopt a credit towards the monthly Distribution fees for Cboe Options Top, (iii) modify the Cboe Options Top Enterprise Fee; and (iv) establish fees for the Cboe One Options Feed.

Cboe Top Data

By way of background, the Exchange offers the Cboe Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The Cboe Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in Cboe Options Top Data. The Exchange's affiliated options exchanges (*i.e.,* Cboe C2 Exchange, Inc. (''C2 Options''), Cboe BZX Exchange, Inc. (''BZX Options''), and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, ''Affiliates'' and together with the Exchange, ''Cboe Options Exchanges'') also offer similar top-of-book data feeds.[4] Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the Cboe Options Top. The Exchange proposes to make the following fee changes relating to Cboe Options Top.

New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the Cboe Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive Cboe Options Top feed.[5] The

[3] The Exchange initially filed the proposed fee changes on March 1, 2023 (SR–CBOE–2023–014). On March 10, 2023, the Exchange withdrew that filing and submitted SR–CBOE–2023–015. On May 9, the Exchange withdrew that filing and submitted SR–CBOE–2023–026. On May 15, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] *See* C2 Options Fees Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

[5] Any applicable User fees will continue to apply during this three-month period. The New External

Continued

Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.[6] They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.[7]

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe Options Top equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe Options Top feed.[8] The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor's monthly Cboe Options Top External Distribution fee. For example, an External Distributor will be subject to a $5,000 monthly Distributor Fee where they elect to receive the Cboe Options Top. If that External Distributor reports User quantities totaling $5,000 or more of monthly usage of the Cboe Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $4,000 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to Cboe Options Top. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $5,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $5,000 in connection with the distribution of the Cboe Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[9]

Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the Cboe Options Top Feed for distribution to an unlimited number of Professional [10] and Non-Professional [11] Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses a flat monthly Enterprise fee of $300,000. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: $300,000 for up to 1,500,000 Users (Tier 1), $450,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $600,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $450,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1.4 million Non-Professional Users who each receive Cboe Options Top at $0.30 per month, then that Distributor will pay $420,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of $300,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[12] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.[13] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which is launching March 1, 2023.[14] Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer (''BBO'') of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,[15] Market

Distributor Credit will not apply during an External Distributor's trial usage period for EDGX [sic] Options Top. External Distributors who receive EDGX [sic] Options Top on a trial basis are still eligible for the New Distributor Credit thereafter.

[6] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[7] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees, Id.

[8] The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe Options Top.

[9] *See e.g.,* EDGX Equities Exchange Fees Schedule, Id.

[10] A Professional User [sic] A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[11] A ''Non-Professional User'' of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[12] *See* Cboe Global Markets North American Data Policies.

[13] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $3,847,500 ($300,000 − 5% × 9 months + $450,000 − 5% × 3 months) as compared to $4,050,000 ($300,000 × 9 months + $450,000 × 3 months).

[14] *See* SR–CBOE–2023–012.

[15] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

Status,[16] Trading Status,[17] and Trade Break [18] messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors [19] would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a ''Data Consolidation Fee,'' which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, vendors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees, up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, C2 Options, EDGX Options, and BZX Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of $15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly Internal Distribution fees are $3,000 for BZX Options Top, $500 for EDGX Options Top, $2,500 for C2 Options Top and $9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of $10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly External Distribution fees are $5,000 per month for the Cboe Options Top, $2,500 per month for C2 Options Top, $2,000 per month for BZX Options Top, and $500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee, that equals the combined respective Distribution fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is $30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $15.50 per Professional User for the Cboe Options Top, $5 per Professional User for C2 Options Top, $5 per Professional User for BZX Options Top, and $5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of $0.60 per Non-Professional User, which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.,* $0.30 per Non-Professional User for Cboe Options Top, $0.10 per Non-Professional User for C2 Options Top, $0.10 per Non-Professional User for BZX Options Top, and $0.10 per Non-

[16] The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

[17] The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.,* Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

[18] The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

[19] For purposes of this filing, a ''vendor'', which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (*e.g.,* a data provider that resells exchange market data to a retail brokerage firm). The term ''distributor'' herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.,* from a data vendor) and then distributes to individual internal or external end-users (*e.g.,* a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's ''third-party customer'' or ''customer'' is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: $350,000 for up to 1,500,000 Users (Tier 1), $550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $750,000 for 2,500,001 or greater Users (Tier 3). The proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $300,000, $450,000 and $600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; $10,000, $20,000 and $30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at $0.60 per month (as proposed), then that Distributor will pay $600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of $350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.[20] A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[21] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier.[22] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and to adopt a 5% discount to those that purchase an Annual license to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.[23] The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium Feed.[24] To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed.

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Options Feed.[25] The proposed Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a $10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling $10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee, whereas if that same External

[20] For example, if a Distributor that distributes Cboe Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[21] *See* Cboe Global Markets North American Data Policies.

[22] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $4,560,00 ($350,000 − 5% × 9 months + $550,000 − 5% × 3 months) as compared to $4,800,000 ($350,000 × 9 months + $550,000 × 3 months). 3150000 [sic].

[23] Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options. External Distributors who receive Cboe One Options on a trial basis are still eligible for the New Distributor Credit thereafter.

[24] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[25] The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

Distributor were to report User quantities totaling $9,000 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $10,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[26] The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed.

Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[27] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [28] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[29] In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[30] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[31] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.[32] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[33] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the Cboe Options Top Data Feed. Further, the quote and last sale data contained in the Cboe Data Feed is identical to the data sent to OPRA for redistribution to the public.[34] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the Cboe Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information [35] from OPRA for the same

[26] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] 15 U.S.C. 78k–1.

[31] 15 U.S.C. 78f(b)(4).

[32] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[33] *See e.g.,* NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[34] The Exchange makes available the top-of-book data and last sale data that is included in the Cboe Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[35] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data

Continued

classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[36] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Cboe Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.[38] The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

Enterprise Fee. The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the Cboe Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of the Cboe One Options Feed or Cboe Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options Feed or Cboe Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users). Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and

products) requires confirmation that the requesting market participant receives data from OPRA.

[36] *Id.*

[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[38] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); *See, e.g.,* Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term ''Nonprofessional''); and *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

not unfairly discriminatory as it provides Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Distributor Fees. The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the existing [sic] distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (*e.g.,* retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee for External Distributors is reasonable because it may encourage more distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

In addition, the Exchange believes it is reasonable to not charge External Distributors of Cboe Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fees for those months. Additionally, the Exchange's affiliated equities exchanges offer a similar credit for a similar market data product.[39] The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the Cboe Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

The Exchange believes the proposal to provide External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, External Distribution fee once such Distributor's free three-month period has ended. The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[40] Further, in every case the Exchange will receive at least the amount of the External Distribution fee for Cboe Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free-three month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Profession Users such as retail investors, to subscribe to the Cboe Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Data Consolidation Fee. The Exchange believes that the proposed $500 per month Data Consolidation Fee charged to Distributors (including vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable and would not permit unfair discrimination.

[39] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[40] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to Cboe Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's Cboe Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of Cboe Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [41] and paragraph (f) of Rule 19b–4 [42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2023–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CBOE–2023–027 and should be submitted on or before June 22, 2023. May 31, 2023

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11607 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97597; File No. SR–NSCC–2023–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Investment Policy

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2023, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Clearing Agency Investment Policy (''Investment Policy'', or ''Policy'') of NSCC and its affiliates, The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and together with DTC, the ''Clearing Agencies''). Specifically, the proposed rule change would amend the Investment Policy to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund;[5] (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds; (4) include approvals required for longer term bank deposits and reverse repurchase investments; (5) remove descriptions of hedge transactions; and (6) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Investment Policy, which was adopted in December 2016[6] and is maintained in compliance with Rule 17Ad–22(e)(16) under the Act.[7] The proposed changes to the Investment Policy would (i) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund, (ii) clarify roles and responsibilities related to credit reviews and setting investment limits, (iii) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds, (iv) include approvals required for longer term bank deposit and reverse repurchase investments, (v) remove descriptions of hedge transactions, and (vi) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

Overview of the Investment Policy

The Investment Policy governs the management, custody and investment of cash deposited to the respective Clearing Funds of NSCC and FICC,[8] the DTC Participants Fund,[9] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules.

The Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC staff in administering the Investment Policy pursuant to those principles. The Investment Policy is co-owned by DTCC's Treasury group (''Treasury'') and the Counterparty Credit Risk team (''CCR'') within DTCC's Group Chief Risk Office (''GCRO''). Treasury is responsible for identifying potential counterparties to investment transactions, establishing, and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. CCR is responsible for conducting a credit review of any potential counterparty, updating those reviews on

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] The respective Clearing Funds of NSCC and FICC, and the DTC Participants Fund are described in the Rules & Procedures of NSCC (''NSCC Rules''), the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules'') or the Rulebook of the Government Securities Division of FICC (''GSD Rules''), respectively, available at *http://dtcc.com/legal/rules-and-procedures. See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

[6] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

[7] 17 CFR 240.17Ad–22(e)(16).

[8] *Supra* note 5.

[9] *Id.*

a quarterly basis, and establishing an investment limit for each counterparty. CCR is also responsible for ongoing monitoring of counterparties and recommending changes to investment limits when appropriate.

The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment. Finally, the Investment Policy defines the approval authority required to exceed established investment limits. As stated above, the activities and processes carried out pursuant to the Investment Policy, and the governance set forth therein, support the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(16).[10]

Proposed Revisions to the Investment Policy

The Investment Policy is reviewed and approved by the Boards annually. In connection with the most recent annual review of the Investment Policy, the Clearing Agencies have decided to propose certain revisions and updates. These proposed revisions, described in greater detail below, are designed to update the Investment Policy to reflect current practices and to help ensure that it continues to operate as intended.

(i) Proposed Change Regarding the Separation and Segregation of Funds

Section 3.2 of the Policy addresses the Clearing Agencies' approach to segregation of deposits to their respective Participants or Clearing Funds. The Policy currently states that deposits to the Participants Fund and Clearing Funds must not be commingled with each other or with general corporate funds of the Clearing Agencies. The Clearing Agencies' intention in using this approach is to ensure these funds are not commingled on the Clearing Agencies' books and records but is not intended to restrict the Clearing Agencies from depositing those amounts in the same deposit accounts, for example at their cash deposit accounts at the Federal Reserve Bank of New York (''FRBNY''). In short, the Clearing Agencies have subaccounts on their books and records to reflect the segregation of various funds, but each Clearing Agency only has one account at the FRBNY where Clearing Funds and Participant Fund are held with Clearing Agency general corporate funds.

For example, deposits to NSCC's Clearing Fund currently can be deposited into the same bank deposit account as NSCC's general corporate funds, so long as these amounts are separated on NSCC's books and records and are not deposited into the same bank account as the DTC Participant Fund or either of the FICC Clearing Funds. Additionally, because GSD and MBSD are divisions of FICC, and FICC, like NSCC and DTC, has only one cash deposit account at the FRBNY, the proposed change also makes clear that the GSD Clearing Fund and MBSD Clearing Fund may be commingled in the same bank deposit account so long as they are segregated on FICC's books and records. Lastly, the proposed change clarifies that the Clearing Agencies' approach to segregation of funds applies not only to the relationship between a Clearing Agency's general corporate funds and its Participants Fund or Clearing Fund but to all investable funds of a Clearing Agency.

Therefore, the Clearing Agencies are proposing to clarify that, although deposits to a Clearing Agencies' Participant Fund or Clearing Fund must be segregated on each respective Clearing Agency's books and records from each other and from their respective general corporate funds, these amounts may be deposited in the same bank deposit account as other investable funds of that Clearing Agency. The proposed clarification is consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants. This proposed change would clarify the Investment Policy and reflect the Clearing Agencies current practices regarding Clearing Agencies' separation and segregation of funds.

(ii) Proposed Change To Clarify Roles and Responsibilities of CCR and Treasury

Section 4 of the Policy outlines the roles and responsibilities of Treasury and CCR in conducting credit reviews and setting investment limits of counterparties. The proposed changes include clarification of these roles and responsibilities to improve the transparency of the Investment Policy to the DTCC staff who adhere to its provisions. The proposed changes to Section 4.2would add the requirement that Treasury state the intended type of investment relationship with a counterparty when it requests that CCR perform a credit review of an investment counterparty. The proposed changes would also clarify that the governance of an investment counterparty credit review depends on whether the proposed counterparty is a participant of a Clearing Agency. Counterparties that are not participants must be approved by a Managing Director of CCR and counterparties that are participants are reviewed using a risk-based criteria based on the participants' membership level.

An additional proposed change to Section 4.2 would remove the requirement that a Managing Director of GCRO approve counterparty investment limits. This proposed change would clarify that CCR is responsible for setting the aggregate investment limits assigned to a counterparty in connection with the credit reviews for that counterparty.

In addition, the Clearing Agencies are proposing changes to Section 4.2 to specify the management of the quarterly credit reviews and changes to counterparty investment limits. The Policy currently states that CCR will notify Treasury if an investment counterparty's external credit rating is downgraded, if CCR believes an investment counterparty's investment limit should change, or if an investment transaction should be terminated. The purpose of this procedure is to quickly capture any changes to an investment counterparty's credit rating that may affect the Clearing Agencies' exposure to such counterparty and, therefore, require change to the allowable investment limit applicable to that counterparty under the Policy. The proposed changes to this Section would clarify that CCR only notifies Treasury if an investment counterparty's external credit ratings fall below the minimum ratings in the Policy or requires a change to that counterparties' investment limit. The proposed changes would also clarify that CCR may advise Treasury if it is appropriate to set a counterparty's investment limit lower than the investment limits provided within the Policy or to terminate an investment transaction. These proposed changes would clarify that either of these investment limit changes require approval by a Managing Director of GCRO.

The proposed changes are consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants.

(iii) Proposed Change To Update Allowable Investments and Investment Limits

The Clearing Agencies are proposing to amend the table of allowable investments in Section 6 of the Policy to reflect their current investment practice of only investing the Clearing

[10] 17 CFR 240.17Ad–22(e)(16).

Funds of NSCC and FICC; NSCC's Fully Paid-For Account, DTC Short Position Cash, Corporate Actions Payments and Principal & Interest Payments; and GSD Forward Margin in bank deposits. The table identifies the sources of investable funds that are invested by the Clearing Agencies, and groups these sources of funds into separate categories. The Policy currently permits the Clearing Agencies to invest the investable funds listed above in multiple types of investment vehicles, for example reverse repurchase agreements. The Clearing Agencies believe that it is prudent investment practice to limit the investment of these funds to only bank deposits and have, in practice, already limited such investments accordingly. The proposed changes to this table would also delete footnotes that include information that is no longer necessary given this change in investment practice.

Two proposed changes to Section 6.2.1 of the Policy would conform the Investment Policy to current practice. First, this section currently states that the DTC Participant Fund may only be invested in demand deposit, savings or checking accounts that provide same day access to funds. The Clearing Agencies would update this section to make clear that these criteria also applies to investment of the NSCC and FICC Clearing Funds. Finally, the proposed changes would include adding ''unless an exception has been granted pursuant to Section 4.2 of this Policy'' following the requirement for approved bank counterparty minimum external credit ratings, for clarification purposes in terms of the interplay of the various sections in the Policy.

(iv) Proposed Change To Include Approvals Required for Longer Term Transactions

The Clearing Agencies are proposing to amend the Policy to describe the approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight. The Policy is currently silent as to the approval process for these longer-term transactions. The proposed changes would describe the requirement that CCR approve such longer-term transactions and would align the parameters around establishing investment limits for such transactions to the guidelines provided in Section 6.2.1 of the Policy, for longer term bank deposit investments, and Section 6.2.2, for reverse repurchase agreements, unless an exception has been granted pursuant to Section 4.2 of the Policy.

The proposed changes would also describe the requirement that CCR assess the creditworthiness of a counterparty when determining term to maturity for such longer-term transactions requested by Treasury. These proposed changes would improve the Investment Policy by clearly describing the approval process for these types of investments.

(v) Proposed Change To Remove Reference to Hedge Transactions

The proposed changes would remove references to the Clearing Agencies' process involving hedge transactions from the Policy. Section 6.2.6 of the Policy currently describes allowable hedge transactions, limitations on hedge transaction maturity dates and value amounts, and the approval process for hedge transactions. The proposed changes would remove this section from the Policy because hedging activity is different from investment activity. Additionally, hedging activity is conducted using only general corporate funds of the Clearing Agencies, thereby posing very little risk to the Clearing Agencies' Clearing Fund or Participant Fund. Therefore, the Clearing Agencies believe it is appropriate to establish a stand-alone internal hedging policy reflecting the processes, procedures and philosophy regarding hedge transactions that is currently captured in this Investment Policy. Such internal hedging policy would provide greater detail and clarity related to the current hedging practices of the Clearing Agency. Further, the proposed removal of references to hedging activity would improve the Investment Policy in clarifying and focusing its purpose.

(vi) Proposed Change To Make Technical Corrections and Revisions

Finally, the proposed changes would make technical corrections to statements in the Investment Policy, delete irrelevant processes, and add clarifying words or sentences throughout the Policy. These changes are (1) change the word ''Subject'' to ''Pursuant'' in the footnote to the table in Section 5 and delete the second footnote, (2) change the heading of subparagraph 6.2.4 from *Reverse Repurchase Agreements (Reverse Repos)* to *Money Market Mutual Funds (MMMFs)* as the content of the subparagraph discusses MMMFs instead of Reverse Repos, (3) change the word ''percent'' as it relates to a counterparty's shareholders' equity capital in Section 6.2.1 to ''multiple'' for consistency with the use of the word multiple in the corresponding table, (4) remove reference to Hold-in custody Reverse Repos in Section 6.2.2 as the Clearing Agencies do not engage in such transactions, (5) change numeric representations in the table in 6.2.1 for consistency throughout the Policy, (6) delete any footnotes made inaccurate or unnecessary by the other proposed changes to the Policy, and (7) add the word ''amount'' in front of the words ''by 30%'' in Section 7.1 for clarification purposes. These changes are not substantive changes to the Clearing Agencies' investment practices.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency.[11] In particular, the Clearing Agencies believe that the proposed modifications to the Investment Policy are consistent with Section 17A(b)(3)(F) of the Act [12] and Rule 17Ad22(e)(16) under the Act,[13] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to assure the safeguarding of securities and funds that are in the custody or control of each of the Clearing Agencies or for which they are responsible.[14] The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example, following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed change to reflect the Clearing Agencies' current investment practice to only invest NSCC and FICC Clearing Funds, Fully Paid-For Account, Short Position Cash, Corporate Actions Payments, Principal & Interest Payments, and GSD Forward Margin in bank deposits would allow it to adhere to these guidelines by maximizing liquidity and minimizing the risk posed by other, potentially longer term, investments. Therefore, the Clearing Agencies believe the proposed change would allow the Clearing Agencies to continue to invest pursuant to the Investment Policy in a prudent and conservative manner that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible.

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of the

[11] 17 CFR 240.17Ad–22(e)(16).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(16).

[14] 15 U.S.C. 78q–1(b)(3)(F).

Clearing Agencies be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[15] The proposed changes to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) remove descriptions of hedge transactions; and (4) make technical corrections and revisions to clarify and simplify statements in the Investment Policy would help clarify the administration of the procedures outlined in the Policy and therefore aid in the cooperation and coordination between the DTCC staff who adhere to its provisions.

Additionally, the proposed change to provide approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight would improve the effectiveness of the Investment Policy and allow the Clearing Agencies to administer the Investment Policy in alignment with the investment guidelines and governance procedures set forth therein. Specifically, the Investment Policy sets forth guiding principles for the investment of funds, which include adherence to a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles of the Investment Policy also address the process for evaluating the credit ratings of counterparties and setting investment limits. Given that such guidelines and governance procedures are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(16) under the Act requires, in part, the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard the Clearing Agencies' own and their participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[17] The Clearing Agencies believe that the Investment Policy, as amended by the proposed changes, follows a prudent and conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss, by setting appropriate investment practices and creating clear guidelines. As originally implemented, the Investment Policy was designed to meet the requirements of Rule 17Ad–22(e)(16) under the Act.[18]

For the reasons stated above, the Clearing Agencies believe that the proposed revisions to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) update allowable investments for the Clearing Agencies' respective Clearing Funds and other investable funds; and (3) include approvals required for longer term bank deposits and reverse repo investments would both strengthen the risk management objectives of the Investment Policy and improve the clarity of the Policy and, therefore, make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. In this way, these proposed changes would better allow the Clearing Agencies to maintain this document in a way that is designed to meet the requirements of Rule 17Ad–22(e)(16).[19] Therefore, the Clearing Agencies believe these proposed revisions would be consistent with the requirements of Rule 17Ad–22(e)(16) under the Act.[20]

(B) Clearing Agency's Statement on Burden on Competition

Each of the Clearing Agencies believes that none of the proposed revisions to the Investment Policy would have any impact, or impose any burden, on competition. The Investment Policy applies equally to the allowable investments of the Clearing Agencies, including the FICC and NSCC Clearing Funds and DTC Participants Fund deposits, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not affect any changes on the fundamental purpose or operation of this document and, as such, would also not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[21] of the Act and paragraph (f)[22] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2023–005 on the subject line.

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(16).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NSCC–2023–005 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11616 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97580; File No. SR–C2–2023–013]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2023, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.[3] Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to C2 Options Top, (ii) adopt a credit towards the monthly Distribution fees for C2 Options Top, (iii) modify the C2 Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

C2 Top Data

By way of background, the Exchange offers the C2 Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The C2 Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in C2 Options Top Data. The Exchange's affiliated options exchanges (*i.e.,* Cboe Exchange, Inc. (''Cboe Options''), Cboe BZX Exchange, Inc. (''BZX Options''), and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, ''Affiliates'' and together with the Exchange, ''Cboe Options Exchanges'') also offer similar top-of-book data feeds.[4] Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top. The Exchange proposes to make the following fee changes relating to C2 Options Top.

New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the C2 Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive C2 Options Top feed.[5] The

[3] The Exchange initially filed the proposed fee changes on March 1, 2023 (SR–C2–2023–008). On March 3, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–009. On March 16, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–010. On May 15, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Cboe Options Fees Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

[5] Any applicable User fees will continue to apply during this three-month period.

Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of their top-of-book data feeds.[6] They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.[7]

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the C2 Options Top equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the C2 Options Top feed.[8] The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor's monthly C2 Options Top External Distribution fee. For example, an External Distributor will be subject to a $2,500 monthly Distributor Fee where they elect to receive the C2 Options Top. If that External Distributor reports User quantities totaling $2,500 or more of monthly usage of the C2 Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $1,500 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to C2 Options Top. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $2,500, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $2,500 in connection with the distribution of the C2 Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[9]

Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the C2 Options Top Feed for distribution to an unlimited number of Professional [10] and Non-Professional [11] Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses a flat monthly Enterprise fee of $10,000. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: $10,000 for up to 1,500,000 Users (Tier 1), $20,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $30,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $20,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive C2 Options Top at $0.10 per month, then that Distributor will pay $100,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of $10,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[12] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.[13] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which is launching March 1, 2023.[14] Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer (''BBO'') of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,[15] Market

[6] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[7] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees, Id.

[8] Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for EDGX [sic] Options Top. External Distributors who receive EDGX [sic] Options Top on a trial basis are still eligible for the New Distributor Credit thereafter.

[9] *See e.g.,* EDGX Equities Exchange Fees Schedule, Id.

[10] A Professional User [sic] A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[11] A ''Non-Professional User'' of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[12] *See* Cboe Global Markets north American Data Policies.

[13] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $142,500 ($10,000 − 5% × 9 months + $20,000 − 5% × 3 months) as compared to $150,000 ($10,000 × 9 months + $20,000 × 3 months).

[14] *See* SR–CboeEDGX–2023–013 [sic].

[15] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

Status,[16] Trading Status,[17] and Trade Break [18] messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors [19] would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a ''Data Consolidation Fee,'' which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, Distributors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that Distributors, including vendors, could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, Cboe Options, C2 [sic] Options, and BZX Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of $15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly Internal Distribution fees are $3,000 for BZX Options Top, $500 for EDGX Options Top, $2,500 for C2 Options Top and $9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of $10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly External Distribution fees are $5,000 per month for the Cboe Options Top, $2,500 per month for C2 Options Top, $2,000 per month for BZX Options Top, and $500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee, that equals the combined respective Distribution fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is $30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $15.50 per Professional User for the Cboe Options Top, $5 per Professional User for C2 Options Top, $5 per Professional User for BZX Options Top, and $5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of $0.60 per Non-Professional User, which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.,* $0.30 per Non-Professional User for Cboe Options Top, $0.10 per Non-Professional User for C2 Options Top, $0.10 per Non-Professional User for

[16] The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

[17] The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.,* Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

[18] The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

[19] For purposes of this filing, a ''vendor'', which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (*e.g.,* a data provider that resells exchange market data to a retail brokerage firm). The term ''distributor'' herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.,* from a data vendor) and then distributes to individual internal or external end-users (*e.g.,* a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's ''third-party customer'' or ''customer'' is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

BZX Options Top, and $0.10 per Non-Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: $350,000 for up to 1,500,000 Users (Tier 1), $550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $750,000 for 2,500,001 or greater Users (Tier 3). The proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $300,000, $450,000 and $600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; $10,000, $20,000 and $30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at $0.60 per month (as proposed), then that Distributor will pay $600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of $350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.[20] A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[21] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier.[22] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and to adopt a 5% discount to those that purchase an Annual license to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.[23] The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium Feed.[24] To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed.

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Options Feed.[25] The proposed Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a $10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling $10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee,

[20] For example, if a Distributor that distributes EDGX [sic] Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[21] *See* Cboe Global Markets north American Data Policies.

[22] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $4,560,00 ($350,000 − 5% × 9 months + $550,000 − 5% × 3 months) as compared to $4,800,000 ($350,000 × 9 months + $550,000 × 3 months). 3150000 [sic].

[23] Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options. External Distributors who receive Cboe One Options on a trial basis are still eligible for the New Distributor Credit thereafter.

[24] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[25] The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

whereas if that same External Distributor were to report User quantities totaling $9,000 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $10,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[26] The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed.

Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[27] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[28] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[29] In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[30] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[31] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.[32] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[33] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top Data Feed. Further, the quote and last sale data contained in the C2 Data Feed is identical to the data sent to OPRA for redistribution to the public.[34] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the C2 Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information[35] from OPRA for the same

[26] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] 15 U.S.C. 78k–1.

[31] 15 U.S.C. 78f(b)(4).

[32] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[33] *See e.g.,* NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[34] The Exchange makes available the top-of-book data and last sale data that is included in the C2 Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[35] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data

Continued

classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[36] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of C2 Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.[38] The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

Enterprise Fee. The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the C2 Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of the Cboe One Options Feed or C2 Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options or C2 Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users).Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and not unfairly discriminatory as it provides

products) requires confirmation that the requesting market participant receives data from OPRA.

[36] *Id.*

[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[38] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); *See, e.g.,* Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term ''Nonprofessional''); and *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Distributor Fees. The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the existing [sic] distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (*e.g.,* retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee for External Distributors is reasonable because it may encourage more distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

New External Distributor Credit

In addition, the Exchange believes it is reasonable to not charge External Distributors of C2 Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fees for those months. Additionally, the Exchange's affiliated equities exchanges offer a similar credit for a similar market data product.[39] The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the C2 Options Top or Cboe One Options feeds in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

Distributor Fee Credit

The Exchange believes the proposal to provide External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, External Distribution fee once such Distributor's free three-month period has ended. The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[40] Further, in every case the Exchange will receive at least the amount of the External Distribution fee for C2 Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free three-month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Profession Users such as retail investors, to subscribe to the C2 Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Data Consolidation Fee. The Exchange believes that the proposed $500 per month Data Consolidation Fee charged to Distributors (including vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the

[39] *See e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

[40] *See e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

Data Consolidation Fee is reasonable would not permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to C2 Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's C2 Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of C2 Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [41] and paragraph (f) of Rule 19b–4 [42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2023–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2023–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/*

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–C2–2023–013 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11608 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97596; File No. SR–FICC–2023–006]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Investment Policy

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Clearing Agency Investment Policy (''Investment Policy'', or ''Policy'') of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and together with DTC, the ''Clearing Agencies''). Specifically, the proposed rule change would amend the Investment Policy to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund;[5] (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds; (4) include approvals required for longer term bank deposits and reverse repurchase investments; (5) remove descriptions of hedge transactions; and (6) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Investment Policy, which was adopted in December 2016[6] and is maintained in compliance with Rule 17Ad–22(e)(16) under the Act.[7] The proposed changes to the Investment Policy would (i) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund, (ii) clarify roles and responsibilities related to credit reviews and setting investment limits, (iii) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds, (iv) include approvals required for longer term bank deposit and reverse repurchase investments, (v) remove descriptions of hedge transactions, and (vi) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

Overview of the Investment Policy

The Investment Policy governs the management, custody and investment of cash deposited to the respective Clearing Funds of NSCC and FICC,[8] the DTC Participants Fund,[9] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules.

The Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC staff in administering the Investment Policy pursuant to those principles. The Investment Policy is co-owned by DTCC's Treasury group (''Treasury'') and the Counterparty Credit Risk team (''CCR'') within DTCC's Group Chief Risk Office (''GCRO''). Treasury is responsible for identifying potential counterparties to investment transactions, establishing, and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. CCR is responsible for conducting a credit review of any potential counterparty, updating those reviews on

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] The respective Clearing Funds of NSCC and FICC, and the DTC Participants Fund are described in the Rules & Procedures of NSCC (''NSCC Rules''), the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules'') or the Rulebook of the Government Securities Division of FICC (''GSD Rules''), respectively, available at *http://dtcc.com/legal/rules-and-procedures. See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

[6] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

[7] 17 CFR 240.17Ad–22(e)(16).

[8] *Supra* note 5.

[9] *Id.*

a quarterly basis, and establishing an investment limit for each counterparty. CCR is also responsible for ongoing monitoring of counterparties and recommending changes to investment limits when appropriate.

The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment. Finally, the Investment Policy defines the approval authority required to exceed established investment limits. As stated above, the activities and processes carried out pursuant to the Investment Policy, and the governance set forth therein, support the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(16).[10]

Proposed Revisions to the Investment Policy

The Investment Policy is reviewed and approved by the Boards annually. In connection with the most recent annual review of the Investment Policy, the Clearing Agencies have decided to propose certain revisions and updates. These proposed revisions, described in greater detail below, are designed to update the Investment Policy to reflect current practices and to help ensure that it continues to operate as intended.

(i) Proposed Change Regarding the Separation and Segregation of Funds

Section 3.2 of the Policy addresses the Clearing Agencies' approach to segregation of deposits to their respective Participants or Clearing Funds. The Policy currently states that deposits to the Participants Fund and Clearing Funds must not be commingled with each other or with general corporate funds of the Clearing Agencies. The Clearing Agencies' intention in using this approach is to ensure these funds are not commingled on the Clearing Agencies' books and records but is not intended to restrict the Clearing Agencies from depositing those amounts in the same deposit accounts, for example at their cash deposit accounts at the Federal Reserve Bank of New York (''FRBNY''). In short, the Clearing Agencies have subaccounts on their books and records to reflect the segregation of various funds, but each Clearing Agency only has one account at the FRBNY where Clearing Funds and Participant Fund are held with Clearing Agency general corporate funds.

For example, deposits to NSCC's Clearing Fund currently can be deposited into the same bank deposit account as NSCC's general corporate funds, so long as these amounts are separated on NSCC's books and records and are not deposited into the same bank account as the DTC Participant Fund or either of the FICC Clearing Funds. Additionally, because GSD and MBSD are divisions of FICC, and FICC, like NSCC and DTC, has only one cash deposit account at the FRBNY, the proposed change also makes clear that the GSD Clearing Fund and MBSD Clearing Fund may be commingled in the same bank deposit account so long as they are segregated on FICC's books and records. Lastly, the proposed change clarifies that the Clearing Agencies' approach to segregation of funds applies not only to the relationship between a Clearing Agency's general corporate funds and its Participants Fund or Clearing Fund but to all investable funds of a Clearing Agency.

Therefore, the Clearing Agencies are proposing to clarify that, although deposits to a Clearing Agencies' Participant Fund or Clearing Fund must be segregated on each respective Clearing Agency's books and records from each other and from their respective general corporate funds, these amounts may be deposited in the same bank deposit account as other investable funds of that Clearing Agency. The proposed clarification is consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants. This proposed change would clarify the Investment Policy and reflect the Clearing Agencies current practices regarding Clearing Agencies' separation and segregation of funds.

(ii) Proposed Change To Clarify Roles and Responsibilities of CCR and Treasury

Section 4 of the Policy outlines the roles and responsibilities of Treasury and CCR in conducting credit reviews and setting investment limits of counterparties. The proposed changes include clarification of these roles and responsibilities to improve the transparency of the Investment Policy to the DTCC staff who adhere to its provisions. The proposed changes to Section 4.2would add the requirement that Treasury state the intended type of investment relationship with a counterparty when it requests that CCR perform a credit review of an investment counterparty. The proposed changes would also clarify that the governance of an investment counterparty credit review depends on whether the proposed counterparty is a participant of a Clearing Agency. Counterparties that are not participants must be approved by a Managing Director of CCR and counterparties that are participants are reviewed using a risk-based criteria based on the participants' membership level.

An additional proposed change to Section 4.2 would remove the requirement that a Managing Director of GCRO approve counterparty investment limits. This proposed change would clarify that CCR is responsible for setting the aggregate investment limits assigned to a counterparty in connection with the credit reviews for that counterparty.

In addition, the Clearing Agencies are proposing changes to Section 4.2 to specify the management of the quarterly credit reviews and changes to counterparty investment limits. The Policy currently states that CCR will notify Treasury if an investment counterparty's external credit rating is downgraded, if CCR believes an investment counterparty's investment limit should change, or if an investment transaction should be terminated. The purpose of this procedure is to quickly capture any changes to an investment counterparty's credit rating that may affect the Clearing Agencies' exposure to such counterparty and, therefore, require change to the allowable investment limit applicable to that counterparty under the Policy. The proposed changes to this Section would clarify that CCR only notifies Treasury if an investment counterparty's external credit ratings fall below the minimum ratings in the Policy or requires a change to that counterparties' investment limit. The proposed changes would also clarify that CCR may advise Treasury if it is appropriate to set a counterparty's investment limit lower than the investment limits provided within the Policy or to terminate an investment transaction. These proposed changes would clarify that either of these investment limit changes require approval by a Managing Director of GCRO.

The proposed changes are consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants.

(iii) Proposed Change To Update Allowable Investments and Investment Limits

The Clearing Agencies are proposing to amend the table of allowable investments in Section 6 of the Policy to reflect their current investment practice of only investing the Clearing

[10] 17 CFR 240.17Ad–22(e)(16).

Funds of NSCC and FICC; NSCC's Fully Paid-For Account, DTC Short Position Cash, Corporate Actions Payments and Principal & Interest Payments; and GSD Forward Margin in bank deposits. The table identifies the sources of investable funds that are invested by the Clearing Agencies, and groups these sources of funds into separate categories. The Policy currently permits the Clearing Agencies to invest the investable funds listed above in multiple types of investment vehicles, for example reverse repurchase agreements. The Clearing Agencies believe that it is prudent investment practice to limit the investment of these funds to only bank deposits and have, in practice, already limited such investments accordingly. The proposed changes to this table would also delete footnotes that include information that is no longer necessary given this change in investment practice.

Two proposed changes to Section 6.2.1 of the Policy would conform the Investment Policy to current practice. First, this section currently states that the DTC Participant Fund may only be invested in demand deposit, savings or checking accounts that provide same day access to funds. The Clearing Agencies would update this section to make clear that these criteria also applies to investment of the NSCC and FICC Clearing Funds. Finally, the proposed changes would include adding ''unless an exception has been granted pursuant to Section 4.2 of this Policy'' following the requirement for approved bank counterparty minimum external credit ratings, for clarification purposes in terms of the interplay of the various sections in the Policy.

(iv) Proposed Change To Include Approvals Required for Longer Term Transactions

The Clearing Agencies are proposing to amend the Policy to describe the approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight. The Policy is currently silent as to the approval process for these longer-term transactions. The proposed changes would describe the requirement that CCR approve such longer-term transactions and would align the parameters around establishing investment limits for such transactions to the guidelines provided in Section 6.2.1 of the Policy, for longer term bank deposit investments, and Section 6.2.2, for reverse repurchase agreements, unless an exception has been granted pursuant to Section 4.2 of the Policy.

The proposed changes would also describe the requirement that CCR assess the creditworthiness of a counterparty when determining term to maturity for such longer-term transactions requested by Treasury. These proposed changes would improve the Investment Policy by clearly describing the approval process for these types of investments.

(v) Proposed Change To Remove Reference to Hedge Transactions

The proposed changes would remove references to the Clearing Agencies' process involving hedge transactions from the Policy. Section 6.2.6 of the Policy currently describes allowable hedge transactions, limitations on hedge transaction maturity dates and value amounts, and the approval process for hedge transactions. The proposed changes would remove this section from the Policy because hedging activity is different from investment activity. Additionally, hedging activity is conducted using only general corporate funds of the Clearing Agencies, thereby posing very little risk to the Clearing Agencies' Clearing Fund or Participant Fund. Therefore, the Clearing Agencies believe it is appropriate to establish a stand-alone internal hedging policy reflecting the processes, procedures and philosophy regarding hedge transactions that is currently captured in this Investment Policy. Such internal hedging policy would provide greater detail and clarity related to the current hedging practices of the Clearing Agency. Further, the proposed removal of references to hedging activity would improve the Investment Policy in clarifying and focusing its purpose.

(vi) Proposed Change To Make Technical Corrections and Revisions

Finally, the proposed changes would make technical corrections to statements in the Investment Policy, delete irrelevant processes, and add clarifying words or sentences throughout the Policy. These changes are (1) change the word ''Subject'' to ''Pursuant'' in the footnote to the table in Section 5 and delete the second footnote, (2) change the heading of subparagraph 6.2.4 from *Reverse Repurchase Agreements (Reverse Repos)* to *Money Market* Mutual *Funds (MMMFs)* as the content of the subparagraph discusses MMMFs instead of Reverse Repos, (3) change the word ''percent'' as it relates to a counterparty's shareholders' equity capital in Section 6.2.1 to ''multiple'' for consistency with the use of the word multiple in the corresponding table, (4) remove reference to Hold-in custody Reverse Repos in Section 6.2.2 as the Clearing Agencies do not engage in such transactions, (5) change numeric representations in the table in 6.2.1 for consistency throughout the Policy, (6) delete any footnotes made inaccurate or unnecessary by the other proposed changes to the Policy, and (7) add the word ''amount'' in front of the words ''by 30%'' in Section 7.1 for clarification purposes. These changes are not substantive changes to the Clearing Agencies' investment practices.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency.[11] In particular, the Clearing Agencies believe that the proposed modifications to the Investment Policy are consistent with Section 17A(b)(3)(F) of the Act [12] and Rule 17Ad22(e)(16) under the Act,[13] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to assure the safeguarding of securities and funds that are in the custody or control of each of the Clearing Agencies or for which they are responsible.[14] The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example, following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed change to reflect the Clearing Agencies' current investment practice to only invest NSCC and FICC Clearing Funds, Fully Paid-For Account, Short Position Cash, Corporate Actions Payments, Principal & Interest Payments, and GSD Forward Margin in bank deposits would allow it to adhere to these guidelines by maximizing liquidity and minimizing the risk posed by other, potentially longer term, investments. Therefore, the Clearing Agencies believe the proposed change would allow the Clearing Agencies to continue to invest pursuant to the Investment Policy in a prudent and conservative manner that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible.

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of the

[11] 17 CFR 240.17Ad–22(e)(16).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(16).

[14] 15 U.S.C. 78q–1(b)(3)(F).

Clearing Agencies be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[15] The proposed changes to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) remove descriptions of hedge transactions; and (4) make technical corrections and revisions to clarify and simplify statements in the Investment Policy would help clarify the administration of the procedures outlined in the Policy and therefore aid in the cooperation and coordination between the DTCC staff who adhere to its provisions.

Additionally, the proposed change to provide approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight would improve the effectiveness of the Investment Policy and allow the Clearing Agencies to administer the Investment Policy in alignment with the investment guidelines and governance procedures set forth therein. Specifically, the Investment Policy sets forth guiding principles for the investment of funds, which include adherence to a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles of the Investment Policy also address the process for evaluating the credit ratings of counterparties and setting investment limits. Given that such guidelines and governance procedures are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(16) under the Act requires, in part, the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard the Clearing Agencies' own and their participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[17] The Clearing Agencies believe that the Investment Policy, as amended by the proposed changes, follows a prudent and conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss, by setting appropriate investment practices and creating clear guidelines. As originally implemented, the Investment Policy was designed to meet the requirements of Rule 17Ad–22(e)(16) under the Act.[18]

For the reasons stated above, the Clearing Agencies believe that the proposed revisions to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) update allowable investments for the Clearing Agencies' respective Clearing Funds and other investable funds; and (3) include approvals required for longer term bank deposits and reverse repo investments would both strengthen the risk management objectives of the Investment Policy and improve the clarity of the Policy and, therefore, make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. In this way, these proposed changes would better allow the Clearing Agencies to maintain this document in a way that is designed to meet the requirements of Rule 17Ad–22(e)(16).[19] Therefore, the Clearing Agencies believe these proposed revisions would be consistent with the requirements of Rule 17Ad–22(e)(16) under the Act.[20]

(B) Clearing Agency's Statement on Burden on Competition

Each of the Clearing Agencies believes that none of the proposed revisions to the Investment Policy would have any impact, or impose any burden, on competition. The Investment Policy applies equally to the allowable investments of the Clearing Agencies, including the FICC and NSCC Clearing Funds and DTC Participants Fund deposits, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not affect any changes on the fundamental purpose or operation of this document and, as such, would also not have any impact, or impose any burden, on competition.

(B) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[21] of the Act and paragraph (f)[22] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2023–006 on the subject line.

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(16).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2023–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2023–006 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11615 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97585; File No. SR–MSRB–2023–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change To Amend MSRB Rules G–12 and G–15 To Define Regular-Way Settlement for Municipal Securities Transactions as Occurring One Business Day After the Trade Date and To Amend Rule G–12 To Update an Outdated Cross Reference

May 25, 2023.

I. Introduction

On March 28, 2023, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend MSRB Rules G–12 (''Rule G–12''), on uniform practice, and G–15 (''Rule G–15''), on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define regular-way settlement for municipal securities transactions as occurring one business day after the trade date and a proposed amendment to Rule G–12 to update an outdated cross reference (''proposed rule change'').

The MSRB also requested that the proposed rule change be approved with an implementation date of May 28, 2024, to align with the implementation date for Exchange Act Rule 15c6–1, as amended.[3]

The proposed rule change was published for comment in the **Federal Register** on April 12, 2023.[4] The Commission received three comment letters [5] on the proposed rule change. On May 11, 2023, the MSRB responded to the comment letters.[6] As described further below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB stated that, consistent with its strategic goal to modernize its rulebook, the proposed rule change would amend Rule G–12(b)(ii)(B)–(D) and Rule G–15(b)(ii)(B)–(C) to define regular-way settlement for municipal securities transactions as occurring on one business day after the trade date (''T+1''). The MSRB wrote that this proposed rule change would align with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6–1, as amended.[7] Although Exchange Act Rule 15c6–1, as amended, does not apply to municipal securities transactions,[8] the MSRB stated that it believes that the regular-way settlement cycle for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions.[9] The MSRB explained that, to facilitate a T+1 standard settlement cycle, the MSRB proposed to amend Rule G–12(b)(ii)(B)–(D) and Rule G–15(b)(ii)(B)–(C) to define regular-way settlement as occurring on the first business day following the trade date rather than on the second business day following the trade date.[10]

A. Background

The SEC initially adopted Exchange Act Rule 15c6–1 [11] in 1993 to shorten the settlement cycle of most equity and corporate bond transactions from the industry standard of within five business days (''T+5'') to requiring settlement within three business days (''T+3'').[12] The T+3 settlement cycle remained in effect until 2017 when the SEC amended Exchange Act Rule 15c6–1 [13] to require the settlement of most equity and corporate bond transactions within two business days (''T+2'').[14] On February 15, 2023, the SEC adopted amendments to Exchange Act Rule 15c6–1 (''Amended Exchange Act Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13916 (Mar. 6, 2023) (''SEC's T+1 Adopting Release''). If the Commission's compliance date were to change, the MSRB stated that it would issue a regulatory notice to modify the compliance date to remain aligned with the Commission's compliance date. Securities Exchange Act Release No. 97257 (Apr. 6, 2023), 88 FR 22075 n.3 (Apr. 12, 2023) (File No. SR–MSRB–2023–03) (''Notice'').

[4] *See* Notice, 88 FR at 22075.

[5] *See* Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated May 3, 2023 (''SIFMA Letter''); Letter from RJ Rondini, Director, Securities Operations, Investment Company Institute, dated May 2, 2023 (''ICI Letter''); and Letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated May 3, 2023 (''Bloomberg Letter'').

[6] *See* Letter to Secretary, Commission, from Saliha Olgun, Interim Chief Regulatory Officer, MSRB, dated May 11, 2023 (''MSRB Letter'').

[7] 17 CFR 240.15c6–1.

[8] *Id.*

[9] Notice, 88 FR at 22075.

[10] *Id.*

[11] 17 CFR 240.15c6–1.

[12] Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891 (Oct. 13, 1993). In adopting Exchange Act Rule 15c6–1, the Commission set a compliance date of June 1, 1995, 58 FR at 52891.

[13] 17 CFR 240.15c6–1.

[14] Securities Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564 (Mar. 29, 2017).

15c6–1'') [15] to further shorten the settlement process, requiring the settlement of most equity and corporate bond transactions on T+1.[16]

Amended Exchange Act Rule 15c6–1(a) [17] prohibits a broker-dealer from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security,[18] a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) that provide for payment of funds and delivery of securities later than T+1, unless the parties expressly agree to a different settlement date at the time of the transaction.[19] The MSRB notes that the recent amendments to Exchange Act Rule 15c6–1 [20] change only the standard settlement date for securities transactions covered by the existing rule and do not impact the existing exclusions enumerated in the rule.[21]

B. Summary of the Proposed Rule Change

The MSRB explained that shortening the settlement process can serve to reduce operational risks that can be present between trade date and settlement date, which can promote investor protection, help reduce the risk of counterparty default and the capital required to mitigate this risk.[22] The MSRB stated that, in support of these objectives and to promote regulatory consistency, it has consistently stated that the regular-way settlement cycle for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions.[23] The MSRB noted that market efficiencies could be eroded if market participants encounter different settlement cycles when replacing equity or corporate bonds with municipal securities.[24] For that reason, the MSRB stated that it adopted a T+3 settlement cycle in 1994,[25] and a T+2 settlement cycle in 2017.[26] According to the MSRB, in order to continue to maintain consistency across asset classes and harmonize with Amended Exchange Act Rule 15c6–1,[27] it proposed to amend Rule G–12(b)(ii)(B)–(D) and Rule G–15(b)(ii)(B)–(C), which both currently define regular-way settlement as occurring on T+2, to define regular-way settlement as occurring on T+1.[28]

The MSRB stated that, as a result, with regular-way settlement occurring on T+1, settlement for ''when, as and if issued'' transactions under Rule G–12(b)(ii)(C) would be required to be a date agreed upon by both parties that is not earlier than one business day after notification of the initial settlement date for the issue.[29] Specifically, the MSRB stated that the proposed rule change would amend G–12(b)(ii)(C)(2) for ''when, as and if issued'' transactions not eligible for automated comparison to specify that the date agreed upon by both parties shall not be earlier than the first business day, rather than the second business day, following the date that the confirmation indicating the final settlement date is sent.[30] For all other municipal securities transactions under Rule G–12(b)(ii)(D), the MSRB stated that the proposed rule change would amend the current time frame to provide that a broker, dealer or municipal securities dealer (a ''dealer'') would be prohibited from effecting a transaction that provides for payment of funds and delivery of securities later than the first business day, rather than the second business day, after the transaction unless expressly agreed to by the parties.[31]

The MSRB also explained that the proposed rule change would correct an outdated cross-reference within Rule G–12.[32] Specifically, the MSRB explained that Rule G–12(b)(ii)(C) regarding the settlement date for ''when, as and if issued'' transactions currently cross-references Rule G–34 subsection paragraph (a)(ii)(D)(2) in referring to the obligation that a managing underwriter has to provide notification of initial settlement date of an issue to the registered clearing agency.[33] The MSRB also wrote that this obligation remains in Rule G–34 but was moved to subparagraph (a)(ii)(E)(2) due to previous amendments to Rule G–34. The MSRB indicated that correcting the cross-reference will not alter the obligation of dealers under Rule G–34 or Rule G–12.[34]

C. Compliance Date

The MSRB stated that the compliance date of the proposed rule change would be announced by the MSRB in a notice published on its website, which date would correspond with the industry's transition to a T+1 regular-way settlement consistent with the implementation of Amended Exchange Act Rule 15c6–1,[35] which is currently scheduled for May 28, 2024. The MSRB indicated that if the SEC's compliance date were to change, the MSRB would issue a regulatory notice to modify the compliance date to remain aligned with the SEC's compliance date.[36]

III. Summary of Comments Received to the Proposed Rule Change

The Commission received three comment letters [37] on the proposed rule

[15] 17 CFR 240.15c6–1.

[16] Notice, 88 FR at 22075.

[17] 17 CFR 240.15c6–1(a).

[18] 15 U.S.C. 78c(a)(12).

[19] The MSRB wrote that Exchange Act Rule 15c6–1 was also amended to prohibit a broker-dealer from effecting or entering into a contract for firm commitment offerings of securities (other than exempt securities) priced after 4:30 p.m. Eastern Time that provide for payment of funds and delivery of securities later than T+2, unless the parties expressly agree to a different settlement date at the time of the transaction. Notice, 88 FR at 22075 n.13.

[20] 17 CFR 240.15c6–1. *See also* SEC's T+1 Adopting Release, 88 FR at 13874.

[21] Notice, 88 FR at 22075–76. The MSRB stated that Exchange Act Rule 15c6–2 improved the processing of institutional trades through new requirements for broker-dealers and registered investment advisers related to same-day affirmations. Notice, 88 FR at 22076 n.15. As Exchange Act Rule 15c6–2 does not apply to municipal securities, the MSRB stated that it is evaluating whether a like requirement should be considered under MSRB rules. *Id.*

[22] Notice, 88 FR at 22076. *See also* SEC's T+1 Adopting Release, 88 FR at 13919.

[23] Notice, 88 FR at 22076. *See, e.g.,* ''T+3 Settlement, Amendments Filed: Rules G–12 and G–15,'' MSRB Reports, Vol. 14, No. 4 (August 1994) at 3; ''Report of the Municipal Securities Rulemaking Board on T+3 Settlement for the Municipal Securities Market'' (Mar.17, 1994); and Securities Exchange Act Release No. 77364 (Mar. 14, 2016), 81 FR 14906 (Mar. 18, 2016) (File No. SR–MSRB–2016–04).

[24] Notice, 88 FR at 22076.

[25] *See* Securities Exchange Act Release No. 34541 (Aug. 17, 1994), 59 FR 43503 (Aug. 24, 1994) (File No. SR–MSRB–1994–10).

[26] *See* Securities Exchange Act Release No. 77744 (Apr. 29, 2016), 81 FR 26851 (May 4, 2016) (File No. SR–MSRB–2016–04).

[27] 17 CFR 240.15c6–1.

[28] Notice, 88 FR at 22076.

[29] *Id.* Pursuant to MSRB Rule G–34 (''Rule G–34''), on CUSIP numbers, new issue, and market information requirements, subparagraph (a)(ii)(E)(2), the initial settlement is to be provided to the registered clearing agency by the managing underwriter for the issue. With respect to transactions not eligible for automated comparison, the settlement date shall not be earlier than the first business day after the date that the confirmation indicating the final settlement date is sent. Notice, 88 FR at 22076 n.21.

[30] Notice, 88 FR at 22076. For ''when, as and if issued'' transactions required to be compared in an automated comparison system under Rule G–12(f)(i), the settlement date shall continue to be not earlier than two business days after notification of initial settlement date for the issue is provided to the registered clearing agency by the managing underwriter for the issue as required by Rule G–34(a)(ii)(E)(2). Notice, 88 FR at 22076 n.22.

[31] Notice, 88 FR at 22076. The MSRB explained that variable rate demand obligations may establish a settlement date expressly agreed to by the parties that may occur later than regular-way settlement to coincide with the reset date (*e.g.,* T+5, T+3, etc.). *See* Three Day Settlement: Rules G–12(b) and G–15(b), *MSRB Reports,* Vol. 15, No. 12 (July 1995), available at *https://www.msrb.org/sites/default/files/July1995-Volume15-Number2.PDF. See also* Notice, 88 FR at 22076 n.23.

[32] Notice, 88 FR at 22076.

[33] *Id.*

[34] *Id.*

[35] *Id. See also* SEC's T+1 Adopting Release, 88 FR at 13916.

[36] Notice, 88 FR at 22076.

[37] *See* SIFMA Letter; ICI Letter; Bloomberg Letter.

change, as well as a response [38] from the MSRB to the comment letters. Two of the three commenters expressed support for the proposed rule change and no commenters objected to the proposed rule change.

Two commenters expressed support for the proposed rule change related to the alignment of municipal securities settlement with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6–1, as amended.[39] Additionally, one commenter encouraged the MSRB to consider further a rule consistent with Exchange Act Rule 15c6–2, to improve the processing of institutional trades through new requirements for market participants related to same-day affirmations.[40] The MSRB responded that it continues to evaluate whether a similar standard may be appropriate for the municipal securities market, and that it expect to engage stakeholders to inform this continued evaluation.[41]

One commenter encouraged the MSRB and the SEC to consider permitting market participants a choice among financial identifiers for required reporting and for other regulatory use cases as specified in the MSRB's rules.[42] The MSRB responded that it appreciated this feedback but believes that the comment is outside of the scope of the proposed rule change and should be considered separately.[43]

The MSRB stated that it continues to believe the proposed rule change is reasonable and that the proposed rule change is necessary and appropriate to reduce operational risks, which can promote investor protection, help reduce risk of counterparty default and the capital required to mitigate this risk.[44]

IV. Discussion and Commission's Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's response thereto. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C), which provides, in part, that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[45] The Commission believes that the proposed rule change will: (i) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products; (ii) remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and (iii) protect investors, municipal entities, obligated persons, and the public interest.

A. Foster Cooperation and Coordination With Persons Engaged in Regulating, Clearing, Settling, Processing Information With Respect to, and Facilitating Transactions in Municipal Securities

The Commission believes that the proposed amendments to Rule G–12(b)(ii)(B) and (D) and Rule G–15(b)(ii)(B)–(C) would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products. In particular, the Commission notes that the proposed rule change applies the standard for regular-way settlement established by the SEC to transactions in municipal securities. As such, the Commission finds that the proposed rule change would continue to ensure that the settlement cycle remains synchronous across classes of securities (including municipal securities). By avoiding different settlement cycles for municipal securities, the proposed rule change would avoid regulatory confusion, simplify compliance, and reduce risk (*e.g.,* operational error). These positive effects would be experienced by municipal securities market participants involved in regulating, clearing and settling, and processing information for municipal securities transactions.

In addition, the proposed amendment to correct an outdated cross-reference in Rule G–12(b)(ii)(C) is consistent with Section 15B(b)(2)(C) of the Act,[46] and correcting the cross-reference will not alter a dealer's obligations under Rule G–34 or Rule G–12. The Commission further believes that the proposed amendment promotes coordination with persons engaged in facilitating transactions in municipal securities by aiding dealers' understanding of the rule and facilitating compliance.

B. Remove Impediments to and Perfect the Mechanism of a Free and Open Market

The Commission also believes the proposed rule change would serve to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products. The Commission notes that the proposed rule change yields long-term benefits for a range of market participants including, but not limited to, operational cost savings, reduced counterparty risk due to a shorter settlement cycle, reduced market risk for unsettled trades, decreasing clearing capital requirements, reduced pro-cyclical margin, and therefore, reduced liquidity demands and risk. The Commission also believes the proposed rule change would promote regulatory consistency and market efficiency. In particular, the Commission notes that the proposed rule change institutes regular-way settlement for municipal transactions consistent with the standard settlement for other security classes, harmonized with Amended Exchange Act Rule 15c6–1.[47] As the proposed rule change reduces liquidity demands and risk, as well as promotes regulatory consistency and market efficiency, the Commission finds that the proposed rule change removes impediments to and perfects the mechanism of a free and open market in municipal securities and municipal financial products.

C. Protect Investors, Municipal Entities, Obligated Persons, and the Public Interest

The Commission believes that the proposed rule change would promote investor protection and the public interest. The Commission notes that the proposed rule change will reduce the timeframe for regular-way settlement and avoiding misaligned settlement dates, which can serve to reduce risks

[38] *See* MSRB Letter.

[39] *See* SIFMA Letter; ICI Letter.

[40] SIFMA Letter at 2.

[41] MSRB Letter at 2.

[42] Bloomberg Letter at 1.

[43] MSRB Letter at 2.

[44] *Id.*

[45] 15 U.S.C. 78*o*–4(b)(2)(C).

[46] *Id.*

[47] 17 CFR 240.15c6–1.

that can be present between trade date and settlement date (including the incidence of failed transactions). In addition, the Commission believes that a shorter standard settlement cycle would reduce liquidity risks that could arise by allowing investors to obtain the proceeds of securities transactions sooner. Given the associated risk reduction, the Commission finds that the proposed rule change would promote investor protection and the public interest.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. Section 15B(b)(2)(C) of the Act[48] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the proposed rule change to amend Rule G–12(b)(ii)(B)–(D) and Rule G–15(b)(ii)(B)–(C) would not impose any burden on competition and would not have an impact on competition, as the proposed rule change would apply a uniform standard for regular-way settlement for municipal securities to align with the standard applicable to, among other securities, equity and corporate bond transactions under Amended Exchange Act Rule 15c6–1.[49] In addition, the proposed rule change would apply equally to all dealers. The proposed rule would also change to correct an outdated cross-reference in Rule G–12(b)(ii)(C) to properly reference Rule G–34(a)(ii)(E)(2) rather than Rule G–34(a)(ii)(D)(2), which would not impose any burden on competition or have an impact on competition as the proposed change is technical in nature, does not impose any new obligation and enhances understanding of the rule. As all of these components of the proposed rule change would be applied equally to all registered dealers transacting in municipal securities, the Commission believes that the proposed rule change would not impose any additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

The Commission also finds that the proposed rule change will not hinder capital formation. As noted above, the proposed rule changes ensures a uniform settlement cycle across all asset classes of securities (including municipal securities), and would be applied equally to all dealers. As such, the Commission believes that the proposed rule change would promote clearer regulatory requirements for the clearance and settlements of municipal securities transactions. Furthermore, a shorter settlement cycle may reduce the volume of unsettled transactions that could potentially pose settlement risk, and also decrease liquidity risk by enabling market participants to access the proceeds of their transactions sooner. Therefore, the Commission also finds that the proposed rule change would promote efficiency of the clearance and settlement process, would not negatively impact the municipal securities market's operational efficiency.

As noted above, the Commission received three comment letters on the filing. The Commission believes that the MSRB, through its response, addressed the commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[50] that the proposed rule change (SR–MSRB–2023–03) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[51]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11611 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

[48] 15 U.S.C. 78*o*–4(b)(2)(C).

[49] 17 CFR 240.15c6–1.

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97595; File No. SR–DTC–2023–005]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Investment Policy

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2023, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Clearing Agency Investment Policy (''Investment Policy'', or ''Policy'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC, the ''Clearing Agencies''). Specifically, the proposed rule change would amend the Investment Policy to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund; [5] (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds; (4) include approvals required for longer term bank deposits and reverse repurchase investments; (5) remove descriptions of hedge transactions; and (6) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[5] The respective Clearing Funds of NSCC and FICC, and the DTC Participants Fund are described in the Rules & Procedures of NSCC (''NSCC Rules''), the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules'') or the Rulebook of the Government Securities Division of FICC (''GSD Rules''), respectively, available at *http://dtcc.com/legal/rules-and-procedures. See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Investment Policy, which was adopted in December 2016 [6] and is maintained in compliance with Rule 17Ad–22(e)(16) under the Act.[7] The proposed changes to the Investment Policy would (i) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund, (ii) clarify roles and responsibilities related to credit reviews and setting investment limits, (iii) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds, (iv) include approvals required for longer term bank deposit and reverse repurchase investments, (v) remove descriptions of hedge transactions, and (vi) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

Overview of the Investment Policy

The Investment Policy governs the management, custody and investment of cash deposited to the respective Clearing Funds of NSCC and FICC,[8] the DTC Participants Fund,[9] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules.

The Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC staff in administering the Investment Policy pursuant to those principles. The Investment Policy is co-owned by DTCC's Treasury group (''Treasury'') and the Counterparty Credit Risk team (''CCR'') within DTCC's Group Chief Risk Office (''GCRO''). Treasury is responsible for identifying potential counterparties to investment transactions, establishing, and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. CCR is responsible for conducting a credit review of any potential counterparty, updating those reviews on a quarterly basis, and establishing an investment limit for each counterparty. CCR is also responsible for ongoing monitoring of counterparties and recommending changes to investment limits when appropriate.

The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment. Finally, the Investment Policy defines the approval authority required to exceed established investment limits. As stated above, the activities and processes carried out pursuant to the Investment Policy, and the governance set forth therein, support the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(16).[10]

Proposed Revisions to the Investment Policy

The Investment Policy is reviewed and approved by the Boards annually. In connection with the most recent annual review of the Investment Policy, the Clearing Agencies have decided to propose certain revisions and updates. These proposed revisions, described in greater detail below, are designed to update the Investment Policy to reflect current practices and to help ensure that it continues to operate as intended.

(i) Proposed Change Regarding the Separation and Segregation of Funds

Section 3.2 of the Policy addresses the Clearing Agencies' approach to segregation of deposits to their respective Participants or Clearing Funds. The Policy currently states that deposits to the Participants Fund and Clearing Funds must not be commingled with each other or with general corporate funds of the Clearing Agencies. The Clearing Agencies' intention in using this approach is to ensure these funds are not commingled on the Clearing Agencies' books and records but is not intended to restrict the Clearing Agencies from depositing those amounts in the same deposit accounts, for example at their cash deposit accounts at the Federal Reserve Bank of New York (''FRBNY''). In short, the Clearing Agencies have subaccounts on their books and records to reflect the segregation of various funds, but each Clearing Agency only has one account at the FRBNY where Clearing Funds and Participant Fund are held with Clearing Agency general corporate funds.

For example, deposits to NSCC's Clearing Fund currently can be deposited into the same bank deposit account as NSCC's general corporate funds, so long as these amounts are separated on NSCC's books and records and are not deposited into the same bank account as the DTC Participant Fund or either of the FICC Clearing Funds. Additionally, because GSD and MBSD are divisions of FICC, and FICC, like NSCC and DTC, has only one cash deposit account at the FRBNY, the proposed change also makes clear that the GSD Clearing Fund and MBSD Clearing Fund may be commingled in the same bank deposit account so long as they are segregated on FICC's books and records. Lastly, the proposed change clarifies that the Clearing Agencies' approach to segregation of funds applies not only to the relationship between a Clearing Agency's general corporate funds and its Participants Fund or Clearing Fund but to all investable funds of a Clearing Agency.

Therefore, the Clearing Agencies are proposing to clarify that, although deposits to a Clearing Agencies' Participant Fund or Clearing Fund must be segregated on each respective Clearing Agency's books and records from each other and from their respective general corporate funds, these amounts may be deposited in the same bank deposit account as other investable funds of that Clearing Agency. The proposed clarification is consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants. This proposed change would clarify the Investment Policy and reflect the Clearing Agencies current practices regarding Clearing Agencies' separation and segregation of funds.

(ii) Proposed Change To Clarify Roles and Responsibilities of CCR and Treasury

Section 4 of the Policy outlines the roles and responsibilities of Treasury and CCR in conducting credit reviews and setting investment limits of counterparties. The proposed changes include clarification of these roles and responsibilities to improve the transparency of the Investment Policy to the DTCC staff who adhere to its provisions. The proposed changes to Section 4.2 would add the requirement that Treasury state the intended type of investment relationship with a counterparty when it requests that CCR perform a credit review of an investment counterparty. The proposed changes would also clarify that the governance of an investment counterparty credit review depends on

[6] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

[7] 17 CFR 240.17Ad–22(e)(16).

[8] *Supra* note 5.

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(16).

whether the proposed counterparty is a participant of a Clearing Agency. Counterparties that are not participants must be approved by a Managing Director of CCR and counterparties that are participants are reviewed using a risk-based criteria based on the participants' membership level.

An additional proposed change to Section 4.2 would remove the requirement that a Managing Director of GCRO approve counterparty investment limits. This proposed change would clarify that CCR is responsible for setting the aggregate investment limits assigned to a counterparty in connection with the credit reviews for that counterparty.

In addition, the Clearing Agencies are proposing changes to Section 4.2 to specify the management of the quarterly credit reviews and changes to counterparty investment limits. The Policy currently states that CCR will notify Treasury if an investment counterparty's external credit rating is downgraded, if CCR believes an investment counterparty's investment limit should change, or if an investment transaction should be terminated. The purpose of this procedure is to quickly capture any changes to an investment counterparty's credit rating that may affect the Clearing Agencies' exposure to such counterparty and, therefore, require change to the allowable investment limit applicable to that counterparty under the Policy. The proposed changes to this Section would clarify that CCR only notifies Treasury if an investment counterparty's external credit ratings fall below the minimum ratings in the Policy or requires a change to that counterparties' investment limit. The proposed changes would also clarify that CCR may advise Treasury if it is appropriate to set a counterparty's investment limit lower than the investment limits provided within the Policy or to terminate an investment transaction. These proposed changes would clarify that either of these investment limit changes require approval by a Managing Director of GCRO.

The proposed changes are consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants.

(iii) Proposed Change To Update Allowable Investments and Investment Limits

The Clearing Agencies are proposing to amend the table of allowable investments in Section 6 of the Policy to reflect their current investment practice of only investing the Clearing Funds of NSCC and FICC; NSCC's Fully Paid-For Account, DTC Short Position Cash, Corporate Actions Payments and Principal & Interest Payments; and GSD Forward Margin in bank deposits. The table identifies the sources of investable funds that are invested by the Clearing Agencies, and groups these sources of funds into separate categories. The Policy currently permits the Clearing Agencies to invest the investable funds listed above in multiple types of investment vehicles, for example reverse repurchase agreements. The Clearing Agencies believe that it is prudent investment practice to limit the investment of these funds to only bank deposits and have, in practice, already limited such investments accordingly. The proposed changes to this table would also delete footnotes that include information that is no longer necessary given this change in investment practice.

Two proposed changes to Section 6.2.1 of the Policy would conform the Investment Policy to current practice. First, this section currently states that the DTC Participant Fund may only be invested in demand deposit, savings or checking accounts that provide same day access to funds. The Clearing Agencies would update this section to make clear that these criteria also applies to investment of the NSCC and FICC Clearing Funds. Finally, the proposed changes would include adding ''unless an exception has been granted pursuant to Section 4.2 of this Policy'' following the requirement for approved bank counterparty minimum external credit ratings, for clarification purposes in terms of the interplay of the various sections in the Policy.

(iv) Proposed Change To Include Approvals Required for Longer Term Transactions

The Clearing Agencies are proposing to amend the Policy to describe the approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight. The Policy is currently silent as to the approval process for these longer-term transactions. The proposed changes would describe the requirement that CCR approve such longer-term transactions and would align the parameters around establishing investment limits for such transactions to the guidelines provided in Section 6.2.1 of the Policy, for longer term bank deposit investments, and Section 6.2.2, for reverse repurchase agreements, unless an exception has been granted pursuant to Section 4.2 of the Policy.

The proposed changes would also describe the requirement that CCR assess the creditworthiness of a counterparty when determining term to maturity for such longer-term transactions requested by Treasury. These proposed changes would improve the Investment Policy by clearly describing the approval process for these types of investments.

(v) Proposed Change To Remove Reference to Hedge Transactions

The proposed changes would remove references to the Clearing Agencies' process involving hedge transactions from the Policy. Section 6.2.6 of the Policy currently describes allowable hedge transactions, limitations on hedge transaction maturity dates and value amounts, and the approval process for hedge transactions. The proposed changes would remove this section from the Policy because hedging activity is different from investment activity. Additionally, hedging activity is conducted using only general corporate funds of the Clearing Agencies, thereby posing very little risk to the Clearing Agencies' Clearing Fund or Participant Fund. Therefore, the Clearing Agencies believe it is appropriate to establish a stand-alone internal hedging policy reflecting the processes, procedures and philosophy regarding hedge transactions that is currently captured in this Investment Policy. Such internal hedging policy would provide greater detail and clarity related to the current hedging practices of the Clearing Agency. Further, the proposed removal of references to hedging activity would improve the Investment Policy in clarifying and focusing its purpose.

(vi) Proposed Change To Make Technical Corrections and Revisions

Finally, the proposed changes would make technical corrections to statements in the Investment Policy, delete irrelevant processes, and add clarifying words or sentences throughout the Policy. These changes are (1) change the word ''Subject'' to ''Pursuant'' in the footnote to the table in Section 5 and delete the second footnote, (2) change the heading of subparagraph 6.2.4 from *Reverse Repurchase Agreements (Reverse Repos)* to *Money Market Mutual Funds (MMMFs)* as the content of the subparagraph discusses MMMFs instead of Reverse Repos, (3) change the word ''percent'' as it relates to a counterparty's shareholders' equity capital in Section 6.2.1 to ''multiple'' for consistency with the use of the word multiple in the corresponding table, (4) remove reference to Hold-in custody Reverse Repos in Section 6.2.2 as the Clearing Agencies do not engage in such transactions, (5) change numeric

representations in the table in 6.2.1 for consistency throughout the Policy, (6) delete any footnotes made inaccurate or unnecessary by the other proposed changes to the Policy, and (7) add the word ''amount'' in front of the words ''by 30%'' in Section 7.1 for clarification purposes. These changes are not substantive changes to the Clearing Agencies' investment practices.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency.[11] In particular, the Clearing Agencies believe that the proposed modifications to the Investment Policy are consistent with Section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(e)(16) under the Act,[13] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to assure the safeguarding of securities and funds that are in the custody or control of each of the Clearing Agencies or for which they are responsible.[14] The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example, following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed change to reflect the Clearing Agencies' current investment practice to only invest NSCC and FICC Clearing Funds, Fully Paid-For Account, Short Position Cash, Corporate Actions Payments, Principal & Interest Payments, and GSD Forward Margin in bank deposits would allow it to adhere to these guidelines by maximizing liquidity and minimizing the risk posed by other, potentially longer term, investments. Therefore, the Clearing Agencies believe the proposed change would allow the Clearing Agencies to continue to invest pursuant to the Investment Policy in a prudent and conservative manner that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible.

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of the Clearing Agencies be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[15] The proposed changes to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) remove descriptions of hedge transactions; and (4) make technical corrections and revisions to clarify and simplify statements in the Investment Policy would help clarify the administration of the procedures outlined in the Policy and therefore aid in the cooperation and coordination between the DTCC staff who adhere to its provisions.

Additionally, the proposed change to provide approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight would improve the effectiveness of the Investment Policy and allow the Clearing Agencies to administer the Investment Policy in alignment with the investment guidelines and governance procedures set forth therein. Specifically, the Investment Policy sets forth guiding principles for the investment of funds, which include adherence to a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles of the Investment Policy also address the process for evaluating the credit ratings of counterparties and setting investment limits. Given that such guidelines and governance procedures are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(16) under the Act requires, in part, the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard the Clearing Agencies' own and their participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[17] The Clearing Agencies believe that the Investment Policy, as amended by the proposed changes, follows a prudent and conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss, by setting appropriate investment practices and creating clear guidelines. As originally implemented, the Investment Policy was designed to meet the requirements of Rule 17Ad–22(e)(16) under the Act.[18]

For the reasons stated above, the Clearing Agencies believe that the proposed revisions to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) update allowable investments for the Clearing Agencies' respective Clearing Funds and other investable funds; and (3) include approvals required for longer term bank deposits and reverse repo investments would both strengthen the risk management objectives of the Investment Policy and improve the clarity of the Policy and, therefore, make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. In this way, these proposed changes would better allow the Clearing Agencies to maintain this document in a way that is designed to meet the requirements of Rule 17Ad–22(e)(16).[19] Therefore, the Clearing Agencies believe these proposed revisions would be consistent with the requirements of Rule 17Ad–22(e)(16) under the Act.[20]

(B) Clearing Agency's Statement on Burden on Competition

Each of the Clearing Agencies believes that none of the proposed revisions to the Investment Policy would have any impact, or impose any burden, on competition. The Investment Policy applies equally to the allowable investments of the Clearing Agencies, including the FICC and NSCC Clearing Funds and DTC Participants Fund deposits, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not affect any changes on the fundamental purpose or operation of this document and, as such, would also not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are

[11] 17 CFR 240.17Ad–22(e)(16).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(16).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(16).

[18] *Id.*

[19] *Id.*

[20] *Id.*

received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [21] of the Act and paragraph (f) [22] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2023–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–DTC–2023–005 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11614 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97581; File No. SR–NYSEAMER–2023–29]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 9232 and Rule 308-Equities

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2023, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 9232 and Rule 308-Equities to reflect the consolidation of the Acceptability Board with the Hearing Board as defined in Rule 9232(b) and make conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 9232 (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists) and Rule 308-Equities (Acceptability Proceedings) to reflect the consolidation of the Acceptability Board with the Hearing Board as defined in Rule 9232(b) and make conforming changes.

Background

Pursuant to Rule 308-Equities(c), Acceptability Committees are composed of at least three persons who are members of the Acceptability Board. Rule 308-Equities establishes procedures for Acceptability Committees to consider applications prior to disapproval by the Exchange

(a) of prospective members or member organizations;

(b) of any prospective member, principal executive, registered representative, or other person required by the Rules of the Exchange to be approved by the Exchange for employment or association with a member or member organization;

(c) for any change in status of any person which change requires Exchange approval; and

(d) of any prospective non-member broker/dealer accessee.

Rule 308-Equities(c) provides that the Acceptability Board be appointed annually by, in part, the Chair of the Board of Directors (''Board'') subject to the approval of the Board, and that it be composed of such number of members and principal executives of the Exchange who are not members of the Board, and registered employees and non-registered employees of members and member organizations, as the Chair of the Board deems necessary.

Rule 9232 establishes procedures for the selection and appointment of panelists to a Hearing Panel as defined in Rule 9120 (Definitions) to conduct disciplinary proceedings and issue a decision. Pursuant to Rule 9232(a), each panelist, except for the Hearing Officer, shall be a member of the Exchange hearing board (''Hearing Board'') provided for in Rule 9232(b). Rule 9232(b) states that the Board shall from time to time appoint a Hearing Board to be composed of such number of members of the Exchange who are not members of the Board and registered employees and nonregistered employees of member organizations or ATP Holders.[3] Pursuant to Rule 9232(b), former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board. Rule 9232(b) further provides that the members of the Hearing Board be appointed annually.

All but one of the current members of the Acceptability Board are also members of the Hearing Board. Given the overlap in the composition of the Acceptability Board and the Hearing Board, and the fact that the Acceptability Board is appointed for no other purpose than providing a ready pool for staffing Acceptability Committees, the Exchange has determined to cease appointing a separate Acceptability Board. In this filing, the Exchange accordingly proposes to amend Rule 308-Equities to reflect the consolidation but retain the current composition of Acceptability Committees.

Rule 9232(b) provides that the Hearing Board be appointed annually by the Board and serve at their pleasure. By contrast, Rule 308-Equities(c) provides that the Acceptability Board be appointed annually by the Chair, or officer, employee or committee or board to whom appropriate authority has been delegated, subject to the approval of the Board, to serve at the pleasure of the Board. Despite the apparent difference, the Exchange believes that as a practical matter the proposed change is consistent with current practice, as the board to whom authority has been delegated pursuant to Rule 308-Equities(c) is the Board itself. As a result, the Board appoints both the Hearing Board and the Acceptability Board. Moreover, the Exchange believes that having the full Board make appointments is the more conservative option for appointing Hearing Board members, who serve at the pleasure of the Board.

Proposed Rule Change

The composition of and criteria for appointment to both the Acceptability Board and the Hearing Board are substantially similar. Current Rule 308-Equities(c) provides that the Acceptability Board shall be composed of ''such number of members and principal executives of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board of the Exchange shall deem necessary.'' Rule 9232(b) provides that the Hearing Board shall be composed ''of such number of members of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations or ATP Holders.'' Rule 9232 further provides that former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board.

Amendments to Rule 308-Equities(c) and (d)

Rule 308-Equities(c) would be amended to provide that Acceptability Committees will consist of at least three persons that are members of the Hearing Board and that are also members and principal executives of the Exchange who are not Board members, or that are registered employees and non-registered employees of member organizations, as the Chair of the Board shall deem necessary. Amended Rule 308-Equities(c) would further clarify that the term Chief Hearing Officer is defined in Rule 9120(c).

As proposed, the Exchange would consolidate the Acceptability Board and the Hearing Board but would only permit members and principal executives of the Exchange who are not members of the Board, or are registered employees and non-registered employees of member organizations, to be appointed to Acceptability Committees consistent with current Rule 308-Equities(c).[4]

[3] ''ATP'' refers to an American Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's options trading facilities. The term ''ATP Holder'' refers to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP. *See* Rule 900.2NY (Definitions). *See also* Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311, n. 25 (March 3, 2016) (SR–NYSEMKT–2016–30), (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the New York Stock Exchange LLC and Certain Conforming and Technical Changes) (noting that equities members do not have employees, but ATP Holders may be natural persons and may have employees).

[4] The references to registered or non-registered employees of a member in the second paragraph of Rule 308-Equities(d) would be deleted. As noted, equities members do not have employees. *See id.* The Exchange would retain the references to registered or non-registered employees of a member organization in that paragraph. Under the current rules, former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board but may not be appointed to the Acceptability Board. In turn, they may not be appointed to Acceptability

Continued

With the exception of the proposed changes described above, the substantive processes set forth in Rule 308-Equities for the appointment and composition of individual Acceptability Committees, including the requirement that Acceptability Committees consist of at least three persons meeting the criteria set forth in subdivision (d) of Rule 308-Equities selected by the Chief Hearing Officer,[5] would remain unchanged.

To effectuate these changes, the Exchange would replace ''Acceptability Board'' with ''Hearing Board'' in Rule 308-Equities(c) and (d). In addition, the Exchange would update Rule 308-Equities(c) to add (c) after Rule 9120, to more clearly refer to the definition of Chief Hearing Officer in the Rule 9000 Series, the Exchange's current disciplinary rules. The second paragraph in current Rule 308-Equities(c), which sets forth the appointment and composition requirements for the Acceptability Board, would be deleted. Proposed Rule 308-Equities(c) would read as follows (new text *italicized,* deleted text bracketed):

(c) All proceedings under this rule shall be conducted in accordance with the provisions of this rule and shall be held before an Acceptability Committee consisting of at least three persons being members of the [Acceptability]*Hearing* Board *described in Rule 9232(b) that are members and principal executives of the Exchange who are not members of the Board of Directors, or are registered employees and non-registered employees of member organizations, as the Chair of the Board of the Exchange shall deem necessary,* to be selected by the Chief Hearing Officer (as defined in Rule 9120*(c)*) in accordance with paragraph (d) of this rule.

[The Chairman of the Board of the Exchange, or officer, employee or committee or board to whom appropriate authority has been delegated, subject to the approval of the Board of Directors, shall from time to time appoint an Acceptability Board to be composed of such number of members and principal executives of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board of the Exchange shall deem necessary. The members of the Acceptability Board shall be appointed annually and shall serve at the pleasure of the Board of Directors.]

Finally, the references to the offices of a member and the references to employees of a member in Rule 308-Equities(d) would be deleted, as members of the Exchange's equity market do not have employees.[6]

Amendments to Rule 9232(a) and (b)

In 2016, the Exchange adopted Rule 9232 as part of its adoption of rules relating to investigation, discipline, and sanctions, and other procedural rules based on the rules of FINRA and the New York Stock Exchange LLC (''NYSE'').[7] Current Rule 9232(b) provides that the Hearing Board shall be ''composed of such number of members of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations or ATP Holders.'' The Rule further provides that former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board.

The Exchange has determined to update the Rule to include principal executives on the Hearing Board so long as they are not members of the Board, and permit principal executives who have retired from the securities industry to be appointed to the Hearing Board. The addition would be consistent with current and proposed Rule 308-Equities(c), which allow principal executives of the Exchange to serve on an Acceptability Committee.[8]

In addition, Hearing Board is currently lower case in Rule 9232(a) and (b). The Exchange proposes to capitalize the term.

Proposed Rule 9232(a) and (b) would read as follows (new text *italicized,* deleted text bracketed):

(a) Each Panelist shall be a person of integrity and judgment and, other than the Hearing Officer, shall be a member of the Exchange [h]*H*earing [b]*B*oard as provided in paragraph (b). At least one Panelist shall be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement.

(b) The Exchange Board of Directors shall from time to time appoint a [h]*H*earing [b]*B*oard to be composed of such number of members *and principal executives* of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations or ATP Holders. Former members*, principal executives,* or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the [h]*H*earing [b]*B*oard. The members of the [h]*H*earing [b]*B*oard shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(1) [10] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is designed to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, consistent with the objectives of

Committees. The proposed changes would exclude them from Acceptability Committees as well.

[5] Chief Hearing Officer is defined in Rule 9120(c). The Chief Hearing Officer is currently a Financial Industry Regulatory Authority, Inc. (''FINRA'') employee appointed by the Board to serve the functions specified in the Exchange's rules.

[6] *See* 81 FR 11311, *supra* note 3.

[7] *See id.,* 11325–11326.

[8] The proposed addition of ''principal executives'' is consistent with NYSE Rule 9232, as recently revised. *See* NYSE Rule 9232(b) (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists), and Securities Exchange Act Release No. 97206 (March 27, 2023), 88 FR 19334 (March 31, 2023) (SR–NYSE–2023–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 308 as Defined in Rule 9232(b) and Delete and Replace Certain Obsolete References).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(5).

Section 6(b)(7) [12] and Section 6(d)(2) [13] of the Act.

Amending Rule 308-Equities to reflect the consolidation of the Acceptability Board with the Hearing Board would continue to contribute to the orderly operation of the Exchange. As proposed, given the overlap in the membership of the two boards, the Exchange would appoint the same individuals to a single board that would be available to serve on both Hearing Panels for disciplinary actions (the Hearing Board's current function) and Acceptability Committees for acceptability hearings (the Acceptability Board's sole current function). The proposed change would streamline the process of appointing individuals to boards charged with specific functions under the Exchange's rules and eliminate duplication in the appointment of Exchange boards, which would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Act and comply with the provisions of the Act by its members and persons associated with members, thereby furthering the objectives of Section 6(b)(1) [14] of the Act.

The Exchange further believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.[15] The proposed changes would continue to permit the appointment of individuals that meet the same qualifications and requirements to consider applications prior to disapproval by the Exchange under current Rule 308-Equities.[16] More specifically, the Exchange believes that there would be no material difference between the requirements for Acceptability Board composition under current Rule 308-Equities(c) and proposed Rule 9232(b) insofar as both rules require that the applicable body be composed of (1) members and principal executives of the Exchange who are not members of the Board, and (2) registered employees and non-registered employees of member organizations or, in the case of Rule 9232, ATP Holders.[17] Proposed Rule 308-Equities(c) makes it clear that the proposed Acceptability Committee can only include members and principal executives of the Exchange who are members of the Board of Directors, or that are registered employees and non-registered employees of member organizations. Both rules also require that the board be appointed annually and serve at the pleasure of the Board, so there will be no change in the frequency of appointment.

Moreover, the Exchange believes that as a practical matter the proposed change is consistent with current practice, as the board to whom authority has been delegated pursuant to Rule 308-Equities(c) is the Board itself, and as a result the Board appoints both the Hearing Board and the Acceptability Board. The Exchange believes that having the full Board make appointments is the more conservative option for appointing Hearing Board members, who serve at the pleasure of the Board. For this reason, the Exchange believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest. In addition, because the substance and process set forth in Rule 308-Equities would remain unchanged, the Exchange believes that the proposed changes would continue to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof consistent with the objectives of Section 6(b)(7) [18] and Section 6(d)(2) [19] of the Act.

The Exchange has also determined to update proposed Rule 9232 to include principal executives on the Hearing Board so long as they are not members of the Board, and permit principal executives who have retired from the securities industry to be appointed to the Hearing Board. The addition would be consistent with current and proposed Rule 308-Equities(c), which allow principal executives of the Exchange to serve on an Acceptability Committee.[20] The Exchange believes that this consistency would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with streamlining the process of appointing individuals to boards charged with specific functions under the Exchange's rules and eliminating duplication in the appointment of Exchange boards and with deleting and, where applicable, replacing, references to obsolete references in its rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6) [25] thereunder.

---

[12] 15 U.S.C. 78f(b)(7).

[13] 15 U.S.C. 78f(d)(2).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(b)(5).

[16] As discussed, the proposed change would not include employees of members. This is not a substantive change, because equities members do not have employees. *See supra* note 4.

[17] Rule 308-Equities applies only to the equities market. Rule 9232 governs disciplinary proceedings for both the equities and options markets.

[18] 15 U.S.C. 78f(b)(7).

[19] 15 U.S.C. 78f(d)(2).

[20] The proposed addition of ''principal executives'' is consistent with NYSE Rule 9232, as recently revised. *See* NYSE Rule 9232(b) (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists), and Securities Exchange Act Release No. 97206 (March 27, 2023), 88 FR 19334 (March 31, 2023) (SR–NYSE–2023–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 308 as Defined in Rule 9232(b) and Delete and Replace Certain Obsolete References).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2023–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NYSEAMER–2023–29 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11609 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97584; File No. SR–CboeBZX–2023–035]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.[3] Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to BZX Options Top, (ii) adopt a credit towards the monthly Distribution fees for BZX Options Top, (iii) modify the BZX Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

BZX Top Data

By way of background, the Exchange offers the BZX Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The BZX Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in BZX Options Top Data. The Exchange's affiliated options exchanges (*i.e.,* Cboe Exchange, Inc. (''Cboe Options''), Cboe C2 Exchange, Inc. (''C2 Options''), and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, ''Affiliates'' and together with the Exchange, ''Cboe Options Exchanges'') also offer similar top-of-book data feeds.[4] Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the

as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on March 1, 2023 (SR–CboeBZX–2023–018). On March 3, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–019. On March 16, 2023, the Exchange withdrew that filing and submitted and submitted SR–CboeBZX–2023–021. On May 15, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Cboe Options Fees Schedule, C2 Options Fees Schedule, and EDGX Rule 21.15.

BZX Options Top. The Exchange proposes to make the following fee changes relating to BZX Options Top.

New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the BZX Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive BZX Options Top feed.[5] The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.[6] They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.[7]

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the BZX Options Top equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the BZX Options Top feed.[8] The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor's monthly EDGX [sic] Options Top External Distribution fee. For example, an External Distributor will be subject to a $2,000 monthly Distributor Fee where they elect to receive the BZX Options Top. If that External Distributor reports User quantities totaling $2,000 or more of monthly usage of the BZX Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $1,500 of monthly usage, it will pay a net of $500 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to BZX Options Top.

External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $2,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $2,000 in connection with the distribution of the BZX Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[9]

Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the BZX Options Top Feed for distribution to an unlimited number of Professional [10] and Non-Professional [11] Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses a flat monthly Enterprise fee of $20,000. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: $20,000 for up to 1,500,000 Users (Tier 1), $40,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $60,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $40,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive BZX Options Top at $0.10 per month, then that Distributor will pay $100,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of $20,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[12] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.[13] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which is launching March 1, 2023.[14] Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More

[5] Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for BZX Options Top. External Distributors who receive BZX Options Top on a trial basis are still eligible for the New Distributor Credit thereafter.

[6] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[7] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[8] The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for BZX Options Top.

[9] *See e.g.,* EDGX Equities Exchange Fees Schedule, Id.

[10] A Professional User [sic] A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[11] A ''Non-Professional User'' of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[12] *See* Cboe Global Markets north American Data Policies.

[13] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $285,000 ($20,000 − 5% × 9 months + $40,000 − 5% × 3 months) as compared to $300,000 ($20,000 × 9 months + $40,000 × 3 months).

[14] *See* SR–CboeBZX–2023–014.

specifically, Cboe One Options Feed will contain the aggregate best bid and offer (''BBO'') of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,[15] Market Status,[16] Trading Status,[17] and Trade Break [18] messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors [19] would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a ''Data Consolidation Fee,'' which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, Distributors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that Distributors, including vendors, could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, Cboe Options, EDGX Options, and C2 Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of $15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly Internal Distribution fees are $3,000 for BZX Options Top, $500 for EDGX Options Top, $2,500 for C2 Options Top and $9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of $10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly External Distribution fees are $5,000 per month for the Cboe Options Top, $2,500 per month for C2 Options Top, $2,000 per month for BZX Options Top, and $500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee that equals the combined respective Distribution fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is $30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $15.50 per Professional User for the

[15] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

[16] The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

[17] The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.,* Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

[18] The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

[19] For purposes of this filing, a ''vendor'', which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (*e.g.,* a data provider that resells exchange market data to a retail brokerage firm). The term ''distributor'' herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.,* from a data vendor) and then distributes to individual internal or external end-users (*e.g.,* a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's ''third-party customer'' or ''customer'' is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

Cboe Options Top, $5 per Professional User for C2 Options Top, $5 per Professional User for BZX Options Top, and $5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of $0.60 per Non-Professional User which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.,* $0.30 per Non-Professional User for Cboe Options Top, $0.10 per Non-Professional User for C2 Options Top, $0.10 per Non-Professional User for BZX Options Top, and $0.10 per Non-Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: $350,000 for up to 1,500,000 Users (Tier 1), $550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $750,000 for 2,500,001 or greater Users (Tier 3). The proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $300,000, $450,000 and $600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; $10,000, $20,000 and $30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at $0.60 per month (as proposed), then that Distributor will pay $600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of $350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.[20] A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[21] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier.[22] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and to adopt a 5% discount to those that purchase an Annual license to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.[23] The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium Feed.[24] To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed.

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Options Feed.[25] The proposed

[20] For example, if a Distributor that distributes BZX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[21] *See* Cboe Global Markets north American Data Policies.

[22] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $4,560,00 ($350,000 − 5% × 9 months + $550,000 − 5% × 3 months) as compared to $4,800,000 ($350,000 × 9 months + $550,000 × 3 months). 3150000 [sic]

[23] Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options. External Distributors who receive Cboe One Options on a trial basis are still eligible for the New Distributor Credit thereafter.

[24] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[25] The Distributor Fee Credit does not apply during any such time that an External Distributor

Continued

Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a $10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling $10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $9,000 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $10,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[26] The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed.

Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[27] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [28] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[29] In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[30] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[31] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.[32] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[33] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BZX Options Top Data Feed. Further, the quote and last sale data contained in the BZX Data Feed is identical to the data sent to OPRA for redistribution to the public.[34] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the BZX Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent

is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

[26] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] 15 U.S.C. 78k–1.

[31] 15 U.S.C. 78f(b)(4).

[32] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

[33] *See e.g.,* NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[34] The Exchange makes available the top-of-book data and last sale data that is included in the BZX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

access to consolidated Options Information [35] from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[36] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of BZX Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.[38] The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

Enterprise Fee. The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the BZX Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of the Cboe One Options Feed or BZX Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options or BZX Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange

[35] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[36] *Id.*

[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[38] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); *See, e.g.,* Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term ''Nonprofessional''); and *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users). Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and not unfairly discriminatory as it provides Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Distributor Fees. The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the existing [sic] distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (*e.g.,* retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee for External Distributors is reasonable because it may encourage more distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

New External Distributor Credit

In addition, the Exchange believes it is reasonable to not charge External Distributors of BZX Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fees for those months. Additionally, the Exchange's affiliated equities exchanges offer a similar credit for a similar market data product.[39] The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the BZX Options Top or Cboe One Options feeds in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

Distributor Fee Credit

The Exchange believes the proposal to provide External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, External Distribution fee once such Distributor's free three-month period has ended. The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[40] Further, in every case the Exchange will receive at least the amount of the External Distribution fee for BZX Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free three-month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Profession Users such as retail investors, to subscribe to the BZX Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Data Consolidation Fee. The Exchange believes that the proposed $500 per month Data Consolidation Fee charged to Distributors (including

[39] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[40] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to BZX Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's BZX Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of BZX Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [41] and paragraph (f) of Rule 19b–4 [42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2023–035 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2023–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeBZX–2023–035 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11610 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97587; File No. SR-CboeEDGX–2023–037]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

May 25, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.[3] Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to EDGX Options Top, (ii) adopt a credit towards the monthly Distribution fees for EDGX Options Top, (iii) modify the EDGX Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

EDGX Top Data

By way of background, the Exchange offers the EDGX Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The EDGX Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in EDGX Options Top Data. The Exchange's affiliated options exchanges (*i.e.,* Cboe Exchange, Inc. (''Cboe Options''), Cboe BZX Exchange, Inc. (''BZX Options''), and Cboe C2 Exchange, Inc. (''C2 Options'') (collectively, ''Affiliates'' and together with the Exchange, ''Cboe Options Exchanges'') also offer similar top-of-book data feeds.[4] Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGX Options Top. The Exchange proposes to make the following fee changes relating to EDGX Options Top.

New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the EDGX Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive EDGX Options Top feed.[5] The

[3] The Exchange initially filed the proposed fee changes on March 1, 2023 (SR–CboeEDGX–2023–017). On March 3, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–018. On March 10, 2023, the Exchange withdrew that filing and submitted SR–CboeEdgx–2023–021. On March 16, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–022. On May 15, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Cboe Options Fees Schedule, C2 Options Fees Schedule, and BZX Rule 21.15.

[5] Any applicable User fees will continue to apply during this three-month period. The New External

Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.[6] They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.[7]

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the EDGX Options Top equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the EDGX Options Top feed.[8] The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor's monthly EDGX Options Top External Distribution fee. For example, an External Distributor will be subject to a $500 monthly Distributor Fee where they elect to receive the EDGX Options Top. If that External Distributor reports User quantities totaling $500 or more of monthly usage of the EDGX Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $400 of monthly usage, it will pay a net of $100 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to EDGX Options Top. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $500 since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $500 in connection with the distribution of the EDGX Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[9]

Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the EDGX Options Top Feed for distribution to an unlimited number of Professional [10] and Non-Professional [11] Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses a flat monthly Enterprise fee of $20,000. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: $20,000 for up to 1,500,000 Users (Tier 1), $40,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $60,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $40,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive EDGX Options Top at $0.10 per month, then that Distributor will pay $100,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of $20,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[12] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.[13] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which is launching March 1, 2023.[14] Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer (''BBO'') of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,[15] Market

Distributor Credit will not apply during an External Distributor's trial usage period for EDGX Options Top. External Distributors who receive EDGX Options Top on a trial basis are still eligible for the New Distributor Credit thereafter.

[6] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[7] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[8] The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for EDGX Options Top.

[9] *See e.g.*, EDGX Equities Exchange Fees Schedule, Id.

[10] A Professional User [sic] A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[11] A ''Non-Professional User'' of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[12] *See* Cboe Global Markets north American Data Policies.

[13] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $285,000 ($20,000 − 5% × 9 months + $40,000 − 5% × 3 months) as compared to $300,000 ($20,000 × 9 months + $40,000 × 3 months).

[14] *See* SR–CboeEDGX–2023–013.

[15] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

Status,[16] Trading Status,[17] and Trade Break [18] messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors [19] would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a ''Data Consolidation Fee,'' which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, Distributors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that Distributors, including vendors, could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, Cboe Options, C2 Options, and BZX Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of $15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly Internal Distribution fees are $3,000 for BZX Options Top, $500 for EDGX Options Top, $2,500 for C2 Options Top and $9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of $10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.,* the monthly External Distribution fees are $5,000 per month for the Cboe Options Top, $2,500 per month for C2 Options Top, $2,000 per month for BZX Options Top, and $500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee, that equals the combined respective Distribution fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is $30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $15.50 per Professional User for the Cboe Options Top, $5 per Professional User for C2 Options Top, $5 per Professional User for BZX Options Top, and $5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of $0.60 per Non-Professional User, which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.,* $0.30 per Non-Professional User for Cboe Options Top, $0.10 per Non-Professional User for C2 Options Top, $0.10 per Non-Professional User for

[16] The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

[17] The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.,* Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

[18] The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

[19] For purposes of this filing, a ''vendor'', which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (*e.g.,* a data provider that resells exchange market data to a retail brokerage firm). The term ''distributor'' herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.,* from a data vendor) and then distributes to individual internal or external end-users (*e.g.,* a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's ''third-party customer'' or ''customer'' is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

BZX Options Top, and $0.10 per Non-Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: $350,000 for up to 1,500,000 Users (Tier 1), $550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and $750,000 for 2,500,001 or greater Users (Tier 3). The proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.,* $300,000, $450,000 and $600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; $10,000, $20,000 and $30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and $20,000, $40,000 and $60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.,* if a Distributor has 2,000,000 Users, it will be subject to $550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at $0.60 per month (as proposed), then that Distributor will pay $600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of $350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.[20] A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.[21] The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.,* if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier.[22] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and to adopt a 5% discount to those that purchase an Annual license to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.[23] The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium Feed.[24] To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed.

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Options Feed.[25] The proposed Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a $10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling $10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee,

[20] For example, if a Distributor that distributes EDGX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[21] *See* Cboe Global Markets north American Data Policies.

[22] The discount will be taken off the Enterprise Tier fee assessed each fee [sic]. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be $4,560,00 ($350,000 − 5% × 9 months + $550,000 − 5% × 3 months) as compared to $4,800,000 ($350,000 × 9 months + $550,000 × 3 months). 3150000 [sic]

[23] Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options. External Distributors who receive Cboe One Options on a trial basis are still eligible for the New Distributor Credit thereafter.

[24] *See e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

[25] The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

whereas if that same External Distributor were to report User quantities totaling $9,000 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently $10,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least $10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[26] The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed.

Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[27] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [28] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[29] In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[30] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[31] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.[32] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[33] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGX Options Top Data Feed. Further, the quote and last sale data contained in the EDGX Data Feed is identical to the data sent to OPRA for redistribution to the public.[34] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the EDGX Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information [35] from OPRA for the same

[26] *See e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] 15 U.S.C. 78k–1.

[31] 15 U.S.C. 78f(b)(4).

[32] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

[33] *See e.g.*, NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[34] The Exchange makes available the top-of-book data and last sale data that is included in the EDGX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[35] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data

classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[36] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of EDGX Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.[38] The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

Enterprise Fee. The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the EDGX Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of the Cboe One Options Feed or EDGX Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options or EDGX Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users). Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and not unfairly discriminatory as it

products) requires confirmation that the requesting market participant receives data from OPRA.

[36] *Id.*

[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[38] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); *See, e.g.,* Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term ''Nonprofessional''); and *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

provides Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Distributor Fees. The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the existing [sic] distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (*e.g.,* retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee for External Distributors is reasonable because it may encourage more distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

In addition, the Exchange believes it is reasonable to not charge External Distributors of EDGX Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fees for those months. Additionally, the Exchange's affiliated equities exchanges offer a similar credit for a similar market data product.[39] The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the EDGX Options Top or Cboe One Options feeds in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

Distributor Fee Credit

The Exchange believes the proposal to provide External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, External Distribution fee once such Distributor's free three-month period has ended. The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.[40] Further, in every case the Exchange will receive at least the amount of the External Distribution fee for EDGX Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free three-month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Profession Users such as retail investors, to subscribe to the EDGX Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

Data Consolidation Fee. The Exchange believes that the proposed $500 per month Data Consolidation Fee charged to Distributors (including vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

[39] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

[40] *See e.g.,* EDGX Equities Exchange Fees Schedule, Market Data Fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges . In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to EDGX Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's EDGX Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of EDGX Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [41] and paragraph (f) of Rule 19b–4 [42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2023–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2023–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeEDGX–2023–037 and should be submitted on or before June 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11613 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17757 and #17758; California Disaster Number CA–00366]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4683–DR), dated 01/14/2023.

Incident: Severe Winter Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/27/2022 through 01/31/2023.

DATES: Issued on 05/25/2023.

Physical Loan Application Deadline Date: Filing Period for Santa Clara County ends 07/24/2023.

Economic Injury (EIDL) Loan Application Deadline Date: Filing Period for Santa Clara County ends 02/26/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 01/14/2023, is hereby amended to include Santa Clara County. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 to request an application. Applications for physical damages may be filed until 07/24/2023 and applications for economic injury may be file until 02/26/2024.

Primary Counties (Physical Damage and Economic Injury Loans): Santa Clara.

Contiguous Counties (Economic Injury Loans Only): None.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11655 Filed 5–31–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17842 and #17843; CALIFORNIA Disaster Number CA–00376]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 05/25/2023.

Physical Loan Application Deadline Date: 06/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Butte.

Contiguous Counties (Economic Injury Loans Only):

California: Colusa, Plumas, Sutter, Yuba.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11688 Filed 5–31–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17941 and #17942; TEXAS Disaster Number TX–00654]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of TEXAS dated 05/25/2023.

Incident: Severe Storms and a Tornado.

Incident Period: 05/13/2023.

DATES: Issued on 05/25/2023.

Physical Loan Application Deadline Date: 07/24/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/26/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

[43] 17 CFR 200.30–3(a)(12).

Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cameron.

Contiguous Counties: TEXAS

Hidalgo, Willacy.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17941 C and for economic injury is 17942 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–11665 Filed 5–31–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17945 and #17946; Oklahoma Disaster Number OK–00169]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of OKLAHOMA (FEMA–4706–DR), dated 05/25/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 04/19/2023 through 04/20/2023.

DATES: Issued on 05/25/2023.

Physical Loan Application Deadline Date: 07/24/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/26/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/25/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: McClain, Pottawatomie.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17945 C and for economic injury is 17946 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11674 Filed 5–31–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17947 and #17948; Soboba Band of Luiseño Indians Disaster Number CA–00384]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Soboba Band of Luiseño Indians

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Soboba Band of Luiseño Indians. (FEMA–4714–DR), dated 05/25/2023.

Incident: Severe Storms and Flooding.

Incident Period: 03/11/2023 through 03/16/2023.

DATES: Issued on 05/25/2023.

Physical Loan Application Deadline Date: 07/24/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/26/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/25/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Soboba Band of Luiseño Indians.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17947 6 and for economic injury is 17948 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11676 Filed 5–31–23; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2023–0014]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA. Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2023–0014].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833–410–1631, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2023–0014].

I. The information collections below are pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 31, 2023. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Missing and Discrepant Wage Reports Letter and Questionnaire—26 CFR 31.6051–2—0960–0432. Each year employers report the wage amounts they paid their employees to the Internal Revenue Service (IRS) for tax purposes, and separately to SSA for retirement and disability coverage purposes. Employers should report the same figures to SSA and the IRS; however, each year some of the employer wage reports SSA receives show wage amounts lower than those employers report to the IRS. SSA uses Forms SSA–L93–SM, SSA–L94–SM, SSA–95–SM, and SSA–97–SM to request revised amounts to ensure employees receive full credit for their wages. SSA is also creating the online IRS/SSA Reconciliation portal which is a streamlined version of the SSA–95–SM and the SSA–97–SM. The IRS/SSA Reconciliation portal will guide employers to the appropriate solutions and will link the users to online tools to correct issues. The respondents are employers who reported lower wage amounts to SSA than they reported to the IRS.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion for forms	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–95–SM and SSA–97–SM (and accompanying cover letters SSA–L93, L94) (paper version)	356,800	1	30	178,400	* $28.01	** $4,996,984
IRS/SSA Reconciliation (online version)	89,200	1	30	44,600	28.01	** 1,249,246
Totals	446,000			223,000		6,246,230

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** 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.*

2. Authorization for the Social Security Administration to Obtain Wage and Employment Information from Payroll Data Providers—0960–0807. Section 824 of the Bipartisan Budget Act (BBA) of 2015, Public Law 114–74, authorizes the Social Security Administration (SSA) to enter into information exchanges with payroll data providers for the purposes of improving program administration and preventing improper payments in the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. SSA uses Form SSA–8240, ''Authorization for the Social Security Administration to Obtain Wage and Employment Information from Payroll Data Providers,'' to secure the authorization needed from the relevant members of the public to obtain their wage and employment information from payroll data providers. Ultimately, SSA uses this wage and employment information to help determine program eligibility and payment amounts.

The public can complete Form SSA–8240 using the following modalities: a paper form; the internet; and an in-office or telephone interview, during which an SSA employee documents the wage and employment information authorization information on one of SSA's internal systems (the Modernized Claims System (MCS); the SSI Claims System; eWork; or iMain). The individual's authorization remains effective until one of the following four events occurs:

- SSA makes a final adverse decision on the application for benefits, and the applicant has filed no other claims or appeals under the Title for which SSA obtained the authorization;
- the individual's eligibility for payments ends, and the individual has not filed other claims or appeals under the Title for which SSA obtained the authorization;
- the individual revokes the authorization verbally or in writing; or
- the deeming relationship ends (for SSI purposes only).

SSA requests authorization on an as-needed basis as part of the following processes: (a) SSDI and SSI initial claims; (b) SSI redeterminations; and (c) SSDI Work Continuing Disability Reviews. The respondents are individuals who file for, or are currently receiving, SSDI or SSI payments, and any person whose income and resources SSA counts when determining an individual's SSI eligibility or payment amount.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8240 (paper)	150,000	1	8	20,000	*$12.81		***$256,200
Web Title II & Title XVI Electronic (MCS, MSSICS, and eWork)	697,580	1	3	34,879	*12.81	*21	***3,574,400
Internet	147,820	1	3	7,391	*12.81	0	***94,679
Totals	995,400			62,270			***3,925,279

*We based this figure on the average DI payments based on SSA's current FY 2023 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*).
**We based this figure by averaging the average FY 2023 wait times for field offices and teleservice centers, based on SSA's current management information data.
***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.*

3. Notice to Electronic Information Exchange Partners to Provide Contractor List—0960–0820. The Federal standards of the Privacy Act of 1974; E-Government act of 2002; and the National Institute of Standard Special Publications 800–53–4, require SSA to maintain oversight of the information it provides to Electronic Information Exchange Partners (EIEPs). EIEPs obtain SSA data for the administration of federally funded and state-administered programs. SSA has a responsibility to monitor and protect the personally identifiable information SSA shares with other Federal and State agencies, and private organizations through the Computer Matching and Privacy Protection Act, and the Information Exchange Agreements (IEA). Under the terms of the State Transmission Component IEA, and agency IEA, EIEPs agree to comply with Electronic Information Exchange security requirements and procedures for State and local Agencies exchanging electronic information with SSA. SSA's Technical Systems Security Requirements document provides all agencies using SSA data ensure SSA's information is not processed; maintained; transmitted; or stored in; or by means of data communications channel; electronic devices; computers; or computer networks located in geographic or virtual areas not subject to U.S. law. SSA conducts tri-annual compliance reviews of all State and local agencies, and Tribes with whom we have an IEA, to verify appropriate security safeguards remain in place to protect the confidentiality of information SSA supplies. SSA requires any organization with an electronic data exchange agreement, to provide the SSA Regional Office contact a current list of contractors, or agents who have access to SSA data upon request. SSA uses Form SSA–731, Notice to Electronic Information Exchange Partners to Provide Contractor List to collect this information. The respondents are Federal agencies, as well as State, local, or tribal agencies who exchange electronic information with SSA.

Type of Request: Revision to an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–731	300	1	20	100	$28.01*	$2.801**

*We based this figure on average State, local and tribal government worker's salaries, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
**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.*

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 3, 2023. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Evidence From Excluded Medical Sources of Evidence—20 CFR 404.1503b and 416.903b—0960–0803. Section 812 of the Bipartisan Budget Act of 2015 (BBA), ''Exclusion of certain medical sources of evidence,'' mandates that SSA exclude evidence in disability decisions from certain medical sources. BBA Section 812 amended section 223(d)(5) of the Social Security Act (Act) by adding a subsection ''C.'' Section 223(d)(5)(C)(i) of the Act, as amended, requires SSA to exclude evidence (except for good cause) from medical sources: (1) convicted of a felony under sections 208 or 1632 of the Act; (2) excluded from participating in any Federal health care program under section 1128 of the Act; or (3) imposed with a civil monetary penalty (CMP), assessment, or both, for submitting false evidence, under section 1129 of the Act. We also implemented section 223(d)(5)(C), as amended, through regulations at 20 CFR 404.1503b and 416.903b of the Code of Federal Regulations. These regulations require excluded medical sources to self-report their excluded status, in writing, each time they submit evidence related to a claim for benefits under Titles II or XVI of the Act. Excluded medical sources' duty to self-report their excluded status applies to evidence they submit to SSA directly, or through a representative, claimant, or other individual or entity. As needed, SSA informs the medical sources we suspect should be excluded of these requirements through a Fact Sheet we send to them via mail, or which they can find on our website where we list the regulatory requirements under BBA section 812. In addition, along with the Fact Sheet and website, we provide sample statements as templates which the affected medical sources can use to create their own written statements as required under our regulations. The respondents for

this collection are medical sources that: (1) meet one of the exclusionary categories set forth in section 223(d)(5)(C)(i) of the Act, as amended; (2) furnish evidence related to a claim for benefits under Titles II or XVI of the Act; and (3) had failed to self-identify as an excluded source of medical evidence as required in Section 223(d(5)(C)(i).

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
404.1503b(c), 416.903b(c)	200	3	600	20	200	$43.80 *	$8,760 **

* We based this figure on the average Healthcare Practitioners and Technical Occupations worker's hourly wages, as reported by Bureau of Labor Statistics data (Healthcare Practitioners and Technical Occupations (*bls.gov*)).

** 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.*

Dated: May 25, 2023.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2023–11579 Filed 5–31–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12033]

International Traffic in Arms Regulations: Reissuance and Update of Open General Licenses 1 and 2

ACTION: Publication of updated general licenses.

SUMMARY: The Department of State, Directorate of Defense Trade Controls is publishing two updated open general licenses, permitting certain reexports and retransfers as provided therein, in the **Federal Register**: Open General License No. 1 and Open General License No. 2, each of which was previously issued on DDTC's website.

FOR FURTHER INFORMATION CONTACT: Dilan Wickrema, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–1282, or email *DDTCCustomerService@state.gov.* ATTN: Open General Licenses 1 and 2.

SUPPLEMENTARY INFORMATION: On July 13, 2022, pursuant to the authority of section 38(a) of the Arms Export Control Act (22 U.S.C. 2778(a)), as delegated to the Secretary of State by E.O. 13637, 78 FR 16129, and as further delegated by the Secretary of State, the Deputy Assistant Secretary of State for Defense Trade Controls issued two open general licenses as part of a pilot program pursuant to the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120–130, § 120.22(b). These open general licenses were originally published with a validity date of one year, effective August 1, 2022, through July 31, 2023.

The Department of State, Directorate of Defense Trade Controls (DDTC) is now updating both open general licenses to extend the validity period and to update citations for ITAR sections moved by rulemaking subsequent to the issuance of the open general licenses on July 13, 2022. Extending the validity period of the open general licenses by three years is necessary in order to allow DDTC to collect sufficient data to consider the usefulness of the Open General License pilot program and to provide industry with sufficient comfort to be able to rely on the open general licenses without fear that they will expire more quickly than a traditional license.

DDTC is also making certain non-substantive edits to both open general licenses to clarify that multiple defense articles need not be reexported or retransferred simultaneously and the open general licenses can be used to reexport or retransfer a single defense article.

Both updated Open General License No. 1 and Open General License No. 2 have been published on DDTC's website and are now being published in the **Federal Register**. The text of Open General License No. 1 and Open General License No. 2 are provided below.

Open General License No. 1

Qualifying Retransfers Within Australia, Canada, and the United Kingdom

(a) The Directorate of Defense Trade Controls (DDTC), pursuant to the International Traffic in Arms Regulations (ITAR) 120.22(b), hereby provides the following Open General License No. 1. Open General License No. 1 licenses the retransfer (as defined in ITAR120.52) of unclassified defense articles to:

(1) the Government of Australia, the Government of Canada, or the Government of the United Kingdom;

(2) members of the Australian Community as defined in ITAR 126.16(d), at all locations in Australia;

(3) members of the United Kingdom Community as defined in ITAR 126.17(d), at all locations in the United Kingdom; or

(4) Canadian-registered persons as defined in ITAR 126.5(b).

(b) The retransfer of any unclassified defense article to any of the parties listed in section (a) is subject to all the following requirements, limitations, and provisos:

(1) Requirements. The transferor shall:

(i) comply with the requirements of ITAR 123.9(b);

(ii) maintain the following records of each retransfer: a description of the defense article, including technical data; the name and address of the recipient and the end-user, and other available contact information (*e.g.,* telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end use of the defense article; the date of the transaction; and the method of transfer;

(iii) ensure that such records are made available to DDTC upon request; and

(iv) utilize Open General License No. 1 as the license or other approval number or exemption citation.

(2) Limitations and provisos:

(i) the defense article to be retransferred was originally exported pursuant to a license or other approval issued by DDTC pursuant to section 38 of the Arms Export Control Act (AECA), the Defense Trade Cooperation Treaty between the United States and Australia (ITAR 126.16), or the Defense Trade Cooperation Treaty between the United States and the United Kingdom, (ITAR 126.17);

(ii) a defense article originally exported pursuant to ITAR 126.6(c) may not be retransferred under this license;

(iii) a defense article described in ITAR 126.16(a)(5) or 126.17(a)(5) may not be retransferred under this license;

(iv) a defense article may not be retransferred under this license if it is listed on the Missile Technology Control Regime (MTCR) Annex or identified as Missile Technology (MT)

on the United States Munitions List (USML) in ITAR part 121;

(v) a defense article may not be retransferred under this license if it will be used to support the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, or processing of a missile, UAV, space-launch vehicle, item listed on the MTCR Annex, or item listed as MT on the USML in ITAR part 121;

(vii) technical data may only be retransferred under this license for the purpose of organizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article;

(viii) any major defense equipment (as defined in ITAR 120.37) valued (in terms of its original acquisition cost) at $25,000,000 or more and any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $100,000,000 or more, may only be retransferred under this license for the purpose of:

i. maintenance, repair, or overhaul defense services, including the repair of defense articles used in furnishing such services, if the retransfer will not result in any increase in the military capability of the defense articles and services to be maintained, repaired, or overhauled; or

ii. a temporary retransfer of defense articles for the sole purpose of receiving maintenance, repair, or overhaul;

(viii) the retransfer must take place wholly within the physical territory of Australia, Canada, or the United Kingdom;

(ix) any retransfer of a defense article other than technical data is for end use by, or operation on behalf of, the Government of Australia, the Government of Canada, or the Government of the United Kingdom; and

(x) Open General License No. 1 may not be utilized by persons to whom a presumption of denial is applied by DDTC pursuant to ITAR 120.16(c) or 127.11(a), including, among other reasons, for past convictions of certain U.S. criminal statutes or because they are otherwise ineligible to contract with or receive an export or import license from an agency of the U.S. Government.

(c) Open General License No. 1 is an other approval as defined in ITAR 120.57(b), including for purposes of ITAR part 127. Any retransfer that satisfies the requirements specified herein may be undertaken pursuant to Open General License No. 1.

(d) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of any retransfer conducted pursuant to Open General License No. 1.

Entry Into Force

Open General License No. 1 is valid for three years, effective August 1, 2023 through July 31, 2026. The Department may later consider reissuing Open General License No. 1 prior to July 31, 2026 and extend the period of validity, or otherwise amend the license.

Open General License No. 1 is limited to transactions described herein, all other transactions subject to the ITAR require a separate license or approval as described in the ITAR.

The Department of State approves Open General License No. 1 pursuant to ITAR 120.22(b) and subject to the enumerated limitations, provisos, and requirements as well as the requirements contained elsewhere in the ITAR. Open General License No. 1 may not be utilized unless and until these limitations, provisos, and requirements have been satisfied.

Please direct any questions regarding Open General License No. 1 to the Office of Defense Trade Controls Policy at telephone (202) 663–1282, or email *DDTCCustomerService@state.gov.*

Jessica Lewis,
Assistant Secretary Bureau of Political-Military Affairs.
Dated: March 23, 2023.

Open General License No. 2

Qualifying Reexports Between or Among Australia, Canada, and the United Kingdom

(a) The Directorate of Defense Trade Controls (DDTC), pursuant to the International Traffic in Arms Regulations (ITAR) 120.22(b), hereby provides the following Open General License No. 2. Open General License No. 2 licenses the reexport (as defined in ITAR120.51) of unclassified defense articles between or among:

(1) the Government of Australia;

(2) the Government of Canada;

(3) the Government of the United Kingdom;

(4) members of the Australian Community as defined in ITAR 126.16(d), at all locations in Australia;

(5) members of the United Kingdom Community as defined in ITAR126.17(d), at all locations in the United Kingdom; and

(6) Canadian-registered persons as defined in ITAR 126.5(b).

(b) The reexport of any unclassified defense article to any of the parties listed in section (a) is subject to all the following requirements, limitations, and provisos:

(1) Requirements. The transferor shall:

(i) comply with the requirements of ITAR 123.9(b);

(ii) maintain the following records of each reexport: a description of the defense article, including technical data; the name and address of the recipient and the end-user, and other available contract information (*e.g.,* telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end use of the defense article; the date of the transaction; and the method of transfer;

(iii) ensure that such records are made available to DDTC upon request; and

(iv) utilize Open General License No. 2 as the license or other approval number or exemption citation.

(2) Limitations and provisos:

(i) the defense article was originally exported pursuant to a license or other approval issued by DDTC pursuant to section 38 of the Arms Export Control Act (AECA), the Defense Trade Cooperation Treaty between the United States and Australia (ITAR126.16), or the Defense Trade Cooperation Treaty between the United States and the United Kingdom, (ITAR126.17);

(ii) a defense article originally exported pursuant to ITAR126.6(c) may not be reexported under this license;

(iii) a defense article described in ITAR126.16(a)(5) or § 126.17(a)(5) may not be reexported under this license;

(iv) a defense article may not be reexported under this license if it is listed on the Missile Technology Control Regime (MTCR) Annex or identified as Missile Technology (MT) on the United States Munitions List (USML) in ITAR part 121;

(v) a defense article may not be reexported under this license if it will be used to support the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, or processing of a missile, UAV, space-launch vehicle, item listed on the MTCR Annex, or item listed as MT on the USML in ITAR part 121;

(vi) technical data may only be reexported under this license for the purpose of organizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article;

(vii) any major defense equipment (as defined in ITAR120.37) valued (in terms of its original acquisition cost) at $25,000,000 or more and any defense article or related training or other

defense service valued (in terms of its original acquisition cost) at $100,000,000 or more, may only be reexported under this license for the purpose of:

i. maintenance, repair, or overhaul defense services, including the repair of defense articles used in furnishing such services, if the reexport will not result in any increase in the military capability of the defense articles and services to be maintained, repaired, or overhauled; or

ii. a temporary reexport of defense articles for the sole purpose of receiving maintenance, repair, or overhaul;

(viii) the reexport must take place wholly within or between the physical territory of Australia, Canada, or the United Kingdom;

(ix) any reexport of a defense article other than technical data is for end use by, or operation on behalf of, the Government of Australia, the Government of Canada, the Government of the United Kingdom, or the Government of the United States; and

(x) Open General License No. 2 may not be utilized by persons to whom a presumption of denial is applied by DDTC pursuant to ITAR§ 120.16(c) or 127.11(a), including, among other reasons, for past convictions of certain U.S. criminal statutes or because they are otherwise ineligible to contract with or receive an export or import license from an agency of the U.S. Government.

(c) Open General License No. 2 is an other approval as defined in ITAR120.57(b), including for purposes of ITAR part 127. Any reexport that satisfies the requirements specified herein may be undertaken pursuant to Open General License No. 2.

(d) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of any reexport conducted pursuant to Open General License No. 2.

Entry into Force

Open General License No. 2 is valid for three years, effective August 1, 2023 through July 31, 2026. The Department may later consider reissuing Open General License No. 2 prior to July 31, 2026 and extend the period of validity, or otherwise amend the license.

Open General License No. 2 is limited to transactions described herein, all other transactions subject to the ITAR require a separate license or approval as described in the ITAR.

The Department of State approves Open General License No. 2 pursuant to ITAR120.22(b) and subject to the enumerated limitations, provisos, and requirements as well as the requirements contained elsewhere in the ITAR. Open General License No. 2 may not be utilized unless and until these limitations, provisos, and requirements have been satisfied.

Please direct any questions regarding Open General License No. 2 to the Office of Defense Trade Controls Policy at telephone (202) 663–1282, or email *DDTCCustomerService@state.gov*. Jessica Lewis Assistant Secretary Bureau of Political-Military Affairs.

Dated: March 23, 2023.

Jessica Lewis,

Assistant Secretary Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2023–11678 Filed 5–31–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12068]

Bureau of Political-Military Affairs; Administrative Debarment Under the International Traffic in Arms Regulations Involving VTA Telecom Corporation

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed administrative debarment under the International Traffic in Arms Regulations (ITAR) on VTA Telecom Corporation.

DATES: Debarment imposed as of April 20, 2023.

FOR FURTHER INFORMATION CONTACT: Jae E. Shin, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632–2107.

SUPPLEMENTARY INFORMATION: Section 127.7(c)(2) of the ITAR authorizes the Assistant Secretary of State for Political-Military Affairs to debar any person who has been found pursuant to part 128 of the ITAR to have committed a violation of the Arms Export Control Act (AECA) when such violation is of such character as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the AECA or ITAR in the future. Such debarment prohibits the subject ''. . . from participating directly or indirectly in any activities that are subject to [the ITAR].''

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see, *e.g.,* §§ 120.15(b), 120.16, 120.18, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any debarred person.

VTA Telecom Corporation (VTA) violated the ITAR when it without authorization exported or attempted to export ITAR-controlled defense articles including hobby rocket motors, video trackers, including related technical data, and a gas turbine engine controlled under U.S. Munitions List Categories IV(d)(7), IV(h), IV(h)(11), XII(a), and XIX(c) to Vietnam, a proscribed country identified in ITAR 126.1 at the time of the ITAR violations. In addition, VTA violated the ITAR by knowingly providing false statements on the required end-use statements for the purpose of causing the export of defense articles to Vietnam.

On April 20, 2023, VTA entered into a Consent Agreement with the Department of State that settled its ITAR violations and that, pursuant to order of the Assistant Secretary for Political-Military Affairs, administratively debarred the company until April 20, 2026. Reinstatement after April 20, 2026, is not automatic, and it is contingent on VTA's full compliance with the terms of the April 20, 2023, Consent Agreement. At the end of the debarment period, VTA may apply for reinstatement.

This notice is provided to make the public aware that VTA is prohibited from participating directly or indirectly in defense trade, including any activities subject to the ITAR. Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception may be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is highly discretionary,

it is excluded from review under the Administrative Procedure Act.

Jessica A. Lewis,

Assistant Secretary, Political-Military Affairs Bureau, Department of State.

[FR Doc. 2023–11686 Filed 5–31–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Opportunity for Letters of Interest for the RRIF Express Pilot Program Under the Railroad Rehabilitation & Improvement Financing Program

AGENCY: Office of the Secretary of Transportation, Department of Transportation (the ''DOT'').

ACTION: Notice of funding opportunity.

SUMMARY: This Notice of Funding Opportunity (''NOFO'') for the RRIF Express Pilot Program (''RRIF Express'') expands the ability of eligible borrowers to access funds by removing the caps on Cost Assistance for advisor fees and Credit Risk Premium (''CRP'') Assistance, provides greater flexibility by allowing unaudited financial statements in lieu of audited financial statements in certain circumstances, and makes other clarifications. The NOFO also implements a sunset date of December 1, 2023. Following the sunset date, this NOFO will expire, and all benefits made available in this Notice will become available to any eligible RRIF borrower, consistent with existing law. All projects that were previously eligible for RRIF Express financing remain eligible under this NOFO. The original NOFO with modifications is in the **SUPPLEMENTARY INFORMATION** section.

DATES: Letters of Interest from prospective RRIF borrowers for RRIF Express will be accepted on rolling basis until available funding is expended or this notice is superseded by another notice.

Prospective RRIF borrowers that have previously submitted a Letter of Interest, but that also seek acceptance into the RRIF Express Pilot Program should resubmit a Letter of Interest following the instructions below. *Prospective RRIF borrowers who previously submitted Letters of Interest under a preceding RRIF Express Notice of Funding Opportunity (published on December 13, 2019, March 16, 2020, June 19, 2020, or November 27, 2020), and whose Letters of Interest have not been returned as ineligible, do not have to re-apply, and may amend their Letter of Interest to take advantage of the provisions of this NOFO. Prospective RRIF borrowers whose Letter of Interest for RRIF Express was returned by the Bureau with advice on issues to address in resubmitting a Letter of Interest may also take advantage of the provisions of this NOFO while also following the advice provided.*

Irrespective of the above, the Bureau continues to accept Letters of Interest on a rolling basis from *any* prospective RRIF borrower interested in receiving RRIF credit assistance *only* (*i.e.,* without participation in RRIF Express).

ADDRESSES: Applicants to RRIF Express *must* use the latest version of the Letter of Interest form available on the Build America Bureau website: *https://www.transportation.gov/content/build-america-bureau* (including applicants who have previously submitted Letters of Interest and who are now seeking participation in RRIF Express). Letters of Interest must be submitted to the Build America Bureau via email at: *RRIFexpress@dot.gov* using the following subject line: ''Letter of Interest for RRIF Express Program.'' Submitters should receive a confirmation email, but are advised to request a return receipt to confirm transmission. *Only Letters of Interest received via email at the above email address with the subject line listed above shall be deemed properly filed.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact William Resch via email at *william.resch@dot.gov* or via telephone at 202–366–2300. A TDD is available at 202–366–3993.

SUPPLEMENTARY INFORMATION: RRIF Express is administered by the DOT's National Surface Transportation and Innovative Finance Bureau (the ''Build America Bureau'' or ''Bureau''). The overall RRIF program finances development of railroad infrastructure and is authorized to have up to $35 billion in outstanding principal amounts from direct loans and loan guarantees at any one time.

The 2018 Consolidated Appropriations Act [1] appropriated $25 million in budget authority to the DOT to cover the cost to the Federal Government (the ''Government'') of RRIF credit assistance—CRP assistance. Additionally, the 2016 Consolidated Appropriations Act [2] and the 2018 Consolidated Appropriations Act [3] provided $1.96 million and $350,000, respectively (of which approximately $1 million remains available), to the DOT to fund certain expenses incurred by prospective RRIF borrowers in preparation of their applications for RRIF credit assistance (this approximately $1 million assistance, collectively, ''Cost Assistance''). Using existing authorities and these new budget authorities, the DOT has established RRIF Express.

Subject to the availability of funds, applicants accepted into the RRIF Express Pilot Program may benefit from two types of financial assistance: (a) Cost Assistance to pay for any portion of the Bureau's advisor expenses borne by applicants; and (b) for those applicants that ultimately receive RRIF credit assistance, CRP Assistance to pay the CRP normally paid by the borrower. These funds will be made available to benefit applicants accepted into RRIF Express on a first come, first served basis until each source of funding is expended or this notice is superseded by a new Notice of Funding Opportunity. Letters of Interest will be accepted in the order received and will be allocated Cost Assistance based on the date of acceptance into RRIF Express. CRP Assistance will be allocated in the order of financial close. For more information about potential financial assistance for RRIF Express applicants, see **SUPPLEMENTARY INFORMATION**: Section II. Funding of CRP and Cost Assistance.

This notice solicits Letters of Interest from prospective RRIF borrowers seeking assistance from RRIF Express, establishes eligibility criteria, and describes the process that prospective borrowers must follow when submitting Letters of Interest.

RRIF Express information, including any additional resources, terms, conditions and requirements when they become available, can be found on the Build America Bureau website at: *https://www.transportation.gov/buildamerica/rrif-express.* For further information about the overall RRIF program in general, including details about the types of credit assistance available, eligibility requirements and the creditworthiness review process, please refer to the *Build America Bureau Credit Programs Guide* (''*Programs Guide*),'' available on the Build America Bureau website: *https://www.transportation.gov/buildamerica/financing/program-guide.*

[1] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

[2] Public Law 114–113, div. L, tit. I, § 152, 129 Stat. 2242, 2856.

[3] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

Table of Contents

I. Background

The Transportation Equity Act for the 21st Century,[4] established the RRIF program, authorizing the DOT to provide credit assistance in the form of direct loans and loan guarantees to public and private applicants for eligible railroad projects. The RRIF program is a DOT program and final approval of credit assistance is reserved for the Secretary of the DOT. The 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; [5] the Rail Safety Improvement Act of 2008; [6] and the 2015 Fixing America's Surface Transportation Act [7] (the ''FAST Act'') each made a number of changes to the RRIF program. In addition, the FAST Act authorized the creation of the Bureau to consolidate administration of certain DOT credit and grant programs, including the RRIF program.

II. Funding of CRP Assistance and Cost Assistance

Through the RRIF program, the DOT is authorized to have, at any one time, up to $35 billion in unpaid principal amounts of obligations under direct loans and loan guarantees to finance development of railroad infrastructure.

CRP Assistance

Prior to the 2018 Consolidated Appropriations Act, the RRIF program did not have an appropriation of budget authority to pay the cost to the Government of providing RRIF credit assistance. As a result, the RRIF borrower or a third party was required to bear this cost through the payment of a CRP. The 2018 Consolidated Appropriations Act [8] provided $25 million to the DOT to cover the cost to the Government of RRIF credit assistance. The DOT will use this funding to pay any CRP that would otherwise be payable by participants in RRIF Express, until this funding is expended, or this notice is superseded by a new Notice of Funding Opportunity.

Cost Assistance

As described in the *Programs Guide,* RRIF borrowers are required to pay (or reimburse the DOT) for costs incurred by the Bureau in connection with the review of Letters of Interest and applications for RRIF credit assistance. The 2016 Consolidated Appropriations Act [9] and the 2018 Consolidated Appropriations Act [10] collectively provided $2.31 million to the DOT to be used to fund expenses incurred by prospective RRIF borrowers in preparation to apply for RRIF credit assistance. A portion of these funds have already been allocated for prior RRIF projects. The DOT is reserving approximately $1 million of remaining funds from these appropriations to offset the cost of DOT advisors that would be payable by participants in RRIF Express, until this funding is expended, or this notice is superseded by a new Notice of Funding Opportunity.

III. Eligibility Requirements for RRIF Credit Assistance

The RRIF statute and implementing rules set forth eligibility requirements for applicants and projects. These requirements as well as other applicable federal requirements are described in detail in the *Programs Guide* and apply to *all* applicants and projects, including those seeking acceptance into RRIF Express. In addition, for prospective borrowers seeking RRIF Express benefits, the requirements set forth in section IV (Eligibility Criteria for RRIF Express) of this notice also apply.

IV. Eligibility Criteria for RRIF Express

The DOT has identified the following strategic objectives for RRIF Express: encouraging increased utilization of RRIF credit assistance by Class II and Class III railroads; reducing transaction costs for Class II and Class III railroads; and streamlining the underwriting process for Class II and Class III railroads. These priorities are reflected in the eligibility criteria below. Generally, projects most suitable for RRIF Express are rail line modernization projects where the borrower has a well-documented financial history and easily identified revenue stream(s) for loan repayment.

To differentiate among Letters of Interest received for projects under this NOFO, the DOT will consider whether the project satisfies the following eligibility criteria as demonstrated by the Letter of Interest:

(i) *Applicant:* The applicant must be a Class II railroad, a Class III railroad, a commuter railroad or a joint venture with a Class II, III, or commuter railroad.

(ii) *Project Size:* The project must have eligible project costs of $150 million or less with no minimum amount.

(iii) *Project Scope:* The project scope, as described in Section B4 of the Letter of Interest, *must be limited to the support of railroad activities that are otherwise eligible for RRIF financing and as outlined below:*

(a) Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs. Note that this category of eligible activities includes the installation of positive train control systems;

(b) Develop or establish new intermodal or railroad facilities;

(c) Reimburse planning and design expenses relating to activities listed above;

(d) Refinancing of non-federal debt incurred at least three years prior to the date of acceptance into RRIF Express and for the purpose of one or more of the following activities: (1) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs; and (2) develop or establish new intermodal or railroad facilities; Refinancing is limited to up to 75% of the final RRIF loan amount.

Letters of Interest including refinancing must demonstrate with specificity in Section D5 how the refinancing would improve the creditworthiness of the applicant and document how such improvement would facilitate the activities referenced in items (a) and (b) above and would increase the applicant's ability to repay a RRIF loan and the overall financial health of the applicant.

(iv) *Applicant Financial History and Projections:* Attachment D–1 of the Letter of Interest must [11] include audited financial statements (by a qualified third party, *e.g.,* a certified public accountant) for the two (2) most recent consecutive years preceding the year of application and that have no significant unresolved findings (*e.g.,* fiscal years 2018 and

[4] Public Law 105–178, § 7203, 112 Stat. 107, 471.

[5] Public Law 109–59, § 9003, 119 Stat. 1144, 1921.

[6] Public Law 110–432, § 701(e), 122 Stat. 4848, 4906.

[7] Public Law 114–94, Subtitle F, 129 Stat. 1312, 1693.

[8] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

[9] Public Law 114–113, div. L, tit. I, § 152, 129 Stat. 2242, 2856.

[10] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

[11] Certain applicants may not need to provide audited financial statements, as explained in more detail below.

2019). Interim unaudited financial statements may be submitted with a letter pledging to provide these audited statements within 60 days of submitting of the LOI and supporting materials. Failure to provide the audited financial statements within 60 days will disqualify the LOI. Applicants choosing this option must still provide unaudited financial statements for the previous five years and prospective financial projections (pro-forma) for the term of the loan. In lieu of providing audited financial statements as documentation of historical financial information in Attachment D–1 of the Letter of Interest, an applicant meeting the size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) may provide unaudited financial statements if such statements are accompanied by the applicant's Federal tax returns and Internal Revenue Service tax verifications for the corresponding years. Borrowers exercising this option should note that it may impact the time required to process their application.

(v) *Collateral:* If collateral will be pledged for the RRIF loan, Section D9 of the Letter of Interest must be supported with an independent appraisal of the collateral that must have been completed within the past 12 months preceding submission of an LOI. Section D9 of the Letter of Interest must demonstrate that the collateral will be unencumbered at time of closing, including a description of any lien release process that would occur prior to closing on the RRIF loan to render currently pledged collateral unencumbered.

(vi) *Environmental Documentation:* Section B6 and Attachment B–6 of the Letter of Interest must demonstrate that either NEPA review is complete or the project is likely to qualify for a Categorical Exclusion (CE) or Finding of No Significant Impact (FONSI) under NEPA. If a NEPA review has not been completed, Attachment B–6 must include a Federal Railroad Administration (FRA) CE worksheet with its Letter of Interest. Where appropriate, the CE worksheet must include substantive analysis of potential impacts to environmental resources and indicate the sources of the information or data used to reach conclusions. For some project types, the CE worksheet will satisfy NEPA review and documentation requirements; however, for other project types, the CE worksheet will inform FRA with sufficient details about the project scope and potential environmental impacts to determine if an Environmental Assessment (EA) is required. The Applicant would be responsible for providing sufficient information and funding for the preparation of an EA, which would also extend the duration of project development activities. FRA may require the use of a third-party contractor consistent with 23 CFR 771.109 (e) for the preparation of an EA. In the event that an EA is necessary, eligible projects must receive a FONSI to qualify for RRIF Express.

To help address compliance with Section 106 of the National Historic Preservation Act, supporting documentation must be submitted for projects involving reconstruction or replacement of existing railroad bridges, tunnels, culverts, stations, or depots that assesses the eligibility of these architectural properties for listing in the National Register of Historic Places. Supporting documentation must also be provided for projects involving ground-disturbing site preparation and construction activities in areas that have not been previously disturbed (such as by prior land development, agricultural activities, or the placement of fill), that assesses the archaeological sensitivity of the project area.

(vii) *Domestic Preference:* Section B4(a) of the Letter of Interest must demonstrate that the steel, iron, manufactured goods, and construction materials used in the project will be produced in the United States in accordance with the Build America, Buy America Act (BABA), Public Law 117–58, 70914 and the Federal Railroad Administration RRIF Buy America policy, which follows 49 U.S.C. 22905(a). Projects that require a waiver are not eligible for RRIF Express, however, prospective borrowers can seek a loan from the overall RRIF program for projects that require a waiver.

(viii) *Project Readiness:* Section B4(c) of the Letter of Interest must demonstrate the prospective borrower's ability to commence the contracting process for construction of the project (*e.g.,* issuance of a final RFP) by not later than 90 days after the date on which a RRIF credit instrument is obligated for the project.

V. Letter of Interest Process and Review and Next Steps

A. Submission of Letters of Interest

All prospective borrowers seeking acceptance into RRIF Express should submit a Letter of Interest following the instructions described in this notice of funding opportunity. The Letter of Interest should be annotated with ''RRIF EXPRESS'' immediately following the Applicant Name in the Summary Information section on page one of the Letter of Interest. The Letter of Interest must, among other things:

(i) Describe the project and its components, location, and purpose in Section B, and include as Attachment B–2 the project budget organized according to construction elements from preliminary engineering estimates, and including costs as appropriate for property, vehicles, professional services, allocated and unallocated contingency, and finance charges;

(ii) Outline the proposed financial plan in Section C, and include the financial model, that addresses such aspects as model assumptions, annual cash flows, balance sheets, income statements and repayment schedules for the duration of the loan, as well as coverage ratios and debt metrics. The model should allow reviewers the flexibility to evaluate scenarios in the native spreadsheet (Microsoft Excel, or equivalent) format and be included in the application as Attachment C–1;

(iii) Provide information regarding satisfaction of other statutory eligibility requirements of the RRIF credit program; and

(iv) Provide information regarding satisfaction of RRIF Express eligibility criteria (as described in Section IV above).

Prospective RRIF Express borrowers should describe in Letter of Interest Section D8 if the project will (1) decrease transportation costs and improve access, especially for rural communities or communities in Opportunity Zones,[12] through reliable and timely access to employment centers and job opportunities; (2) improve long-term efficiency, reliability or costs in the movement of workers or goods; (3) increase the economic productivity of land, capital, or labor, including assets in Opportunity Zones; (4) result in long-term job creation and other economic opportunities; or (5) help the United States compete in a global economy by facilitating efficient and reliable freight movement. Projects that bridge gaps in service in rural areas, and projects that attract private economic development, all support local or regional economic competitiveness.

Letters of Interest must be submitted using the latest form on the Build America Bureau website: *https://www.transportation.gov/content/build-america-bureau.* Other RRIF Express information including any additional terms, conditions, and requirements can

[12] See *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx* for more information on Opportunity Zones.

be found on the Build America Bureau website at: *https://www.transportation.gov/buildamerica/rrif-express.* The Bureau may contact a prospective borrower for clarification of specific information included in the Letter of Interest. The Bureau will review all Letters of Interest properly filed and received in the submission time window provided herein.

B. Review and Evaluation

Each Letter of Interest that is properly filed and received will be evaluated for completeness and eligibility for RRIF Express using the criteria in this notice. This initial step of the review process will include (1) an evaluation as to whether the proposed project and applicant satisfy RRIF statutory eligibility requirements, and (2) an evaluation as to whether the proposed project and applicant satisfy RRIF Express eligibility criteria. In addition, the Bureau will conduct a high- level feasibility assessment of the proposed project and the applicant's plan of finance before a Letter of Interest is accepted into RRIF Express and before a Letter of Interest enters the creditworthiness process. With respect to the project, factors that will be considered include, but are not limited to, (1) the completion of the project being financed is not necessary to repay the proposed RRIF loan; (2) the project budget is in year of expenditure and includes contingencies to account for potential project risks; and (3) the maturity of the proposed RRIF loan does not extend beyond the project's anticipated useful life. With respect to the applicant's plan of finance, factors that will be considered include, but are not limited to, (1) a maximum loan size that, when added to the proposed borrower's existing outstanding and undrawn available debt, does not substantially exceed an earnings before interest, taxes, depreciation, and amortization multiple that would be market appropriate in a similar circumstance, for the most recent trailing twelve month period and for any period of the applicant's forecast; and (2) consistent levels of revenue and operating profitability demonstrated by the proposed borrower over the most recent fiscal year.

The Letters of Interest determined to be eligible for RRIF Express will then be advanced to the Bureau's creditworthiness review process, which is an in-depth creditworthiness review of the project sponsor and the revenue stream proposed to repay the RRIF credit assistance as described in the *Programs Guide.* The Secretary reserves the right to limit the number of applications from a single entity or subordinates of a single parent or holding company. Prospective RRIF borrowers whose RRIF Express Letters of Interest are determined to be ineligible, but whose projects are otherwise statutorily eligible for standard RRIF credit assistance, have the option to be considered under the overall RRIF program.

Issued in Washington, DC.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

[FR Doc. 2023–11576 Filed 5–31–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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. The IRS is soliciting comments concerning Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry.

DATES: Written comments should be received on or before July 31, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1529-Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry.

OMB Number: 1545–1529.

Announcement Numbers: 2000–21 and 2001–01.

Abstract: Announcement 2000–21, 2000–19 I.R.B. 983, and Announcement 2001–1, 2001–2 I.R.B. 277, contain information required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 4,600.

Estimated Time per Respondent: 9 hrs, 22 mins.

Estimated Total Annual Burden Hours: 43,073.

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. Comments will be 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 has 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 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 22, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–11663 Filed 5–31–23; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 15, 2023 on ''Europe, the United States, and Relations with China: Convergence or Divergence?''

DATES: The hearing is scheduled for Thursday, June 15, 2023 at 9:30 a.m.

ADDRESSES: Members of the public will be able to attend in person at TBD or view a live webcast via the Commission's website at *www.uscc.gov. Visit the Commission's website for updates to the hearing location or possible changes to the hearing schedule. Reservations are not required to view the hearing online or in person.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the sixth public hearing the Commission will hold during its 2023 reporting cycle. The hearing will start with an overview of Europe-China relations, including Europe's view of China, China's view of Europe, and perspectives on China from Germany and the Czech Republic. Next, the hearing will evaluate European approaches to addressing China in the economic and technological domains, while comparing these approaches to those of the United States and exploring the space for Transatlantic cooperation. Finally, the hearing will examine European approaches to addressing China on strategic issues, and will also compare these approaches to the United States' and examine the potential for Transatlantic cooperation.

The hearing will be co-chaired by Commissioner Aaron Friedberg and Commissioner James Mann. Any interested party may file a written statement by June 15, 2023 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: May 26, 2023.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2023–11707 Filed 5–31–23; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Activity: Compliance Inspection Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain, select* ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0041.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Compliance Inspection Report (VA Form 26–1839).

OMB Control Number: 2900–0041.

Type of Review: Revision of an approved collection.

Abstract: Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to Veterans by assuring them and VA that the adaptation is in compliance with the plans and specifications for which a specially adapted housing grant is based.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: *example:* 88 FR 16728 on March 20, 2023, page 16728.

Affected Public: Individuals or households.

Estimated Annual Burden: 910 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Generally, between one and four times per project.

Estimated Number of Respondents: 3,640.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–11578 Filed 5–31–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Agency Information Collection Activity: Application for Refund of Educational Contributions

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 31, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0261'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0261'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 94–502.

Title: Application for Refund of Educational Contributions, VAF 22–5281.

OMB Control Number: 2900–0261.

Type of Review: Revision of a currently approved collection.

Abstract: The VA uses the information collection to properly identify and refund remaining chapter 32 contributions to any inactive chapter 32 participant.

Affected Public: Individuals or Households.

Estimated Annual Burden: 603 hours.

Estimated Average Burden Time Per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 3,620.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–11628 Filed 5–31–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Thursday,
No. 105 June 1, 2023

Part II

Securities and Exchange Commission

17 CFR Parts 229, 232, 240, et al.
Share Repurchase Disclosure Modernization; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240, 249, and 274

[Release Nos. 34–97424; IC–34906; File No. S7–21–21]

RIN 3235–AM94

Share Repurchase Disclosure Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under the Securities Exchange Act of 1934. The amendments require additional detail regarding the structure of an issuer's repurchase program and its share repurchases, require the filing of daily quantitative repurchase data either quarterly or semi-annually, and eliminate the requirement to file monthly repurchase data in an issuer's periodic reports. The amendments also revise and expand the existing periodic disclosure requirements about these repurchases. Finally, the amendments add new quarterly disclosure in certain periodic reports related to an issuer's adoption and termination of certain trading arrangements.

DATES: This final rule is effective on July 31, 2023.

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel, Office of Rulemaking, at (202) 551–3460, Division of Corporation Finance; and, with respect to the application to investment companies, Quinn Kane, Special Counsel, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules and forms:

Commission reference	CFR citation (17 CFR)
Regulation S–K:	
Items 10 through 1305	§§ 229.10 through 229.1305.
Item 408	§ 229.408.
Item 601	§ 229.601.
Item 703	§ 229.703.
Regulation S–T:	
Rules 10 through 903	§§ 232.10 through 232.903.
Rule 405	§ 232.405.
Securities Exchange Act of 1934 (''Exchange Act''): [1]	
Rule 13a–21	§ 240.13a–21.
Form F–SR	
Form 20–F	§ 249.220f.
Form 10–Q	§ 249.308a.
Form 10–K	§ 249.310.
Form N–CSR	§§ 249.331 and 274.128.

Table of Contents

[1] 15 U.S.C. 78a *et seq.*

I. Introduction

A. Summary of the Proposed Amendments

On December 15, 2021,[2] the Commission proposed amendments to the disclosure requirements regarding purchases of classes of equity securities registered under 15 U.S.C. 78*l* (''Exchange Act section 12'') made by or on behalf of an issuer or any affiliated purchaser.[3] The proposal was intended to modernize and improve the disclosure currently required by Item 703 of Regulation S–K, Item 16E of Form 20–F, and Item 14 of Form N–CSR about repurchases of an issuer's equity securities.[4] Specifically the Commission proposed to:

- Require quantitative daily repurchase disclosure on a new Form SR, which would be furnished to the Commission one business day after execution of an issuer's share repurchase order;
- Amend Item 703 of Regulation S–K, Item 16E of Form 20–F, and Item 14 of Form N–CSR to require additional detail regarding the structure of an issuer's repurchase program and its share repurchases; and
- Require that information disclosed pursuant to Item 703 of Regulation S–K, Item 16E of Form 20–F, Item 14 of Form N–CSR, and Form SR be reported using a structured data language (specifically, Inline eXtensible Business Reporting Language or ''Inline XBRL'').

The Commission adopted Item 703 in 2003 [5] to require disclosure of any purchase, aggregated on a monthly basis, made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer's equity securities registered under Exchange Act section 12. Currently, Item 703 share repurchase disclosure is required in Form 10–Q for the issuer's first three fiscal quarters and in Form 10–K for the issuer's fourth fiscal quarter.[6] The same disclosure is required by Item 16E of Form 20–F on an annual basis for FPIs, and by Item 14 of Form N–CSR on a semi-annual basis for registered closed-end management investment companies that are exchange traded (''Listed Closed-End Funds'').[7] The disclosure requirements apply to both open market and private transactions, and currently require an issuer to disclose in tabular format:

- The total number of shares (or units) purchased, regardless of amount and whether made pursuant to a publicly announced plan or program, by the issuer or any affiliated purchaser during the relevant period, reported on a monthly basis and by class, including footnote disclosure regarding the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction;
- The average price paid per share (or unit);
- The total number of shares (or units) purchased as part of a publicly announced repurchase plan or program; and
- The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.

Footnote disclosure is also required in the aggregate of the principal terms of all publicly announced repurchase plans or programs, including:

- The date each plan or program was announced;
- The dollar amount (or share or unit amount) approved;
- The expiration date (if any) of each plan or program;
- Each plan or program that has expired during the period covered by the table; and
- Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

B. Consideration of Comments

The Commission voted to issue the proposal at an open meeting on December 15, 2021. The release was posted on the Commission website that day, and comment letters were received beginning that same date. The comment period for the Proposing Release was open for 45 days and ended on April 1, 2022.[8] The Commission has reopened the comment period for the Proposing Release twice for different reasons. The first reopening occurred because certain comments on the Proposing Release were potentially affected by a

[2] *Share Repurchase Disclosure Modernization,* Release No. 34–93783 (Dec. 15, 2021) [87 FR 8443 (Feb. 15, 2022)] (''Proposing Release'').

[3] For purposes of this release, the term ''issuer'' includes affiliated purchasers and any person acting on behalf of the issuer or an affiliated purchaser. The term ''affiliated purchaser'' as used in Item 703 is defined in 17 CFR 240.10b–18(a)(3). References throughout this release to ''issuer repurchases'' include purchases by an affiliated purchaser and purchases by any person acting on behalf of the issuer or an affiliated purchaser.

[4] Subsequent to the proposal, the Commission adopted changes to Form N–CSR that, among other things, redesignated what had been Item 9 of Form N–CSR to be Item 14. *Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements,* Release No. IC–34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)]. This change became effective January 24, 2023. *Id.*

[5] *See Purchases of Certain Equity Securities by the Issuer and Others,* Release No. 33–8335 (Nov. 10, 2003) [68 FR 64952 (Nov. 17, 2003)] (''2003 Adopting Release''). The Commission concluded that disclosure of an issuer's actual purchases would inform investors whether, and to what extent, the issuer had followed through on its original plan.

[6] Certain information regarding share repurchases is also required to be disclosed in an issuer's financial statements, including in the statements of cash flows indicating the amount of cash paid for repurchased securities, *see* ASC 230–10–45–1 to –2 and ASC 230–10–45–15, and the statements of changes in shareholders' equity indicating any reduction in securities outstanding, *see* ASC 505–30–5 to –10, and additional paid-in capital for the securities repurchased. *See* ASC 505–10–50–2 and 17 CFR 210.3–04 (''Rule 3–04 of Regulation S–X''). ASC 505–30–50 also requires footnote disclosure of state law restrictions on the availability of retained earnings for dividend payments as a result of these repurchases, if applicable. If securities are repurchased for purposes other than retirement, or if ultimate disposition has not yet been decided, the amount and cost of the repurchased securities may be shown separately on the balance sheets and statements of changes in shareholders' equity as a deduction from the total of securities, additional paid-in capital, and retained earnings. *See* ASC 505–30–45–1.

[7] Accordingly, unless the context otherwise requires, references in this release to ''Item 703'' should be read to include these parallel provisions of Form N–CSR and Form 20–F. In addition to the disclosures on Form N–CSR that provide detailed information about Listed Closed-End Fund repurchases, Form N–CEN also requires closed-end management investment companies to indicate whether they engaged in a repurchase during the reporting period and, if so, for what type of security. Item D.4 of Form N–CEN.

[8] The public comments we received are available at *https://www.sec.gov/comments/s7-21-21/s72121.htm.* Unless otherwise indicated, the comment letters cited herein are those received in response to the Proposing Release. Two comment letters urged that the comment period for this proposal, among others, be extended to at least 60 days. *See* letter from United States Senator Pat Toomey and United States Representative Patrick McHenry (Jan. 10, 2022). Other commenters also asserted that the Commission provided insufficient time for comment. *See, e.g.,* letters from American Securities Association (Apr. 1, 2022) (''ASA''), Association of the Bar of the City of New York (Apr. 1, 2022) (''NYC Bar''), Brit Stephens (Jan. 28, 2022) (''Stephens''), and U.S. Chamber of Commerce (Feb. 23, 2022) (''Chamber I'').

technological error in the Commission's internet comment form.[9] The First Reopening Release was published in the **Federal Register** on October 18, 2022, and the comment period ended on November 1, 2022.[10]

The second reopening occurred on December 7, 2022.[11] The Commission voted to reopen the comment period in connection with the addition to the comment file of a staff memorandum analyzing the potential economic effects of the new excise tax contained in the Inflation Reduction Act of 2022 [12] (''Inflation Reduction Act'') on the proposed amendments. The Inflation Reduction Act was signed into law after the Proposing Release was published. The Second Reopening Release was published in the **Federal Register** on December 12, 2022, and the comment period closed on January 11, 2023.[13] We have considered the potential effects of the excise tax and the additional comments received [14] and determined that no changes to the proposed amendments are necessary as a result of the Inflation Reduction Act because we believe any impact of the tax on repurchases will not meaningfully affect the rationale for the amendments, as we describe in more detail below.[15]

We received over 170 unique comment letters on the Proposing Release and over 3,200 form letters, which we discuss in context below. We have considered all comments received since December 15, 2021, and do not believe an additional extension of the comment period is necessary.[16]

Additionally, in January 2022,[17] the Commission proposed amendments to 17 CFR 240.10b5–1 (''Rule 10b5–1''), which provides affirmative defenses to allegations of trading on the basis of material nonpublic information in insider trading cases. The Commission also proposed new 17 CFR 229.408(a) (''Item 408(a) of Regulation S–K'') to require disclosure of, among other matters, whether the issuer adopted, modified, or terminated plans intended to meet Rule 10b5–1's conditions for establishing an affirmative defense. In December 2022,[18] the Commission adopted many of the amendments that it proposed in the Rule 10b5–1 Proposing Release, but did not adopt the portion of proposed Item 408(a) of Regulation S–K that pertains to the issuer's use of Rule 10b5–1 in response to commenters' recommendation that it be considered in the context of this rulemaking.[19]

Finally, prior to either proposing release, in September 2021, the Commission's Investor Advisory Committee (''IAC'') [20] issued recommendations regarding disclosure of Rule 10b5–1 plans, including that the Commission ''establish meaningful guardrails around the adoption, modification, and cancellation of Rule 10b5–1 trading plans,'' by addressing certain gaps in the rule that allow corporate insiders to unfairly exploit informational asymmetries.[21]

C. Summary of Final Amendments

Having considered all of the comments we received, we are adopting the final amendments described in this release with some modifications from the proposal in response to those comments. The final amendments require the same additional detail regarding the structure of an issuer's repurchase program and its daily share repurchases, as was proposed. Further, as proposed, the final amendments require issuers to tag the disclosure using Inline XBRL.

Although the final amendments require quantitative disclosure of daily repurchase data, as proposed, the frequency and manner of the disclosure is different from the proposal. Additionally, while we are requiring issuers to disclose the total number of shares repurchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c), and the date that the plan was adopted or terminated, and whether its repurchases were intended to qualify for the 17 CFR 240.10b–18 (''Rule 10b–18'') non-exclusive safe harbor, as proposed, the manner in which registrants provide this disclosure has changed from the proposal. Further, as discussed in greater detail below, the final amendments require:

- Corporate issuers that file on domestic forms to disclose daily quantitative repurchase data at the end of every quarter in an exhibit to their Form 10–Q and Form 10–K (for an issuer's fourth fiscal quarter);
- Listed Closed-End Funds to disclose daily quantitative repurchase data in their annual and semi-annual reports on Form N–CSR; and

[9] *Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments,* Release No. 33–11117 (Oct. 7, 2022) [87 FR 63016 (Oct. 18, 2022)] (''First Reopening Release'').

[10] A few commenters asserted that the comment period for the reopened rulemakings was not sufficient and asked the Commission to extend the comment period for those rulemakings. *See, e.g.,* letters from Attorneys General of the states of Montana *et al.* (Oct. 24, 2022) and U.S. Chamber of Commerce (Nov. 1, 2022) (''Chamber IV'').

[11] *Reopening of Comment Period for Share Repurchase Disclosure Modernization,* Release No. 34–96458 (Dec. 7, 2022) [87 FR 75975 (Dec. 12, 2022)] (''Second Reopening Release'').

[12] *See* Public Law 117–169, 136 Stat. 1818 (2022).

[13] The public comments we received in response to the First Reopening Release and the Second Reopening Release are available at the same location on the Commission's website as the other comment letters addressing the Proposing Release at *https://www.sec.gov/comments/s7-21-21/s72121.htm. See supra* note 8. Some commenters recommended that the Commission postpone adopting the final amendments for additional analysis of future economic conditions and the Inflation Reduction Act's impact on repurchases. *See, e.g.,* letters from Professional Services Council (Jan. 11, 2023) (''PSC''), U.S. Chamber of Commerce (Sept. 20, 2022) (''Chamber III''), and U.S. Chamber of Commerce (Jan. 11, 2023) (''Chamber V''). One of these commenters also stated that the comment period for the Second Reopening Release was insufficient. *See* letter from Chamber V.

[14] *See infra* Section V.A.2.

[15] *See id.* For similar reasons, we do not think it is necessary to postpone adoption of the proposed amendments.

[16] Another comment letter raised concerns about the rulemaking process at the agency more broadly. *See* letter from United States Senator Thom Tillis (Nov. 4, 2022). The process followed in adopting these amendments has complied with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* and other legal requirements.

[17] *Rule 10b5–1 and Insider Trading,* Release No. 33–11013 (Jan. 13, 2022) [87 FR 8686 (Feb. 15, 2022)] (''Rule 10b5–1 Proposing Release'').

[18] *Insider Trading Arrangements and Related Disclosure,* Release No. 33–11138 (Dec. 14, 2022) [87 FR 80362 (Dec. 29, 2022)] (''Rule 10b5–1 Adopting Release'').

[19] *See, e.g.,* letters on the Rule 10b5–1 Proposing Release from Cravath, Swaine & Moore LLP (Mar. 31, 2022) and Simpson Thacher & Bartlett LLP (Mar. 31, 2022). We have considered the comment letters received on the Item 408(a) disclosure proposal and discuss them in the context of new Item 408(d) below. *See infra* Section III.D.2.

[20] The IAC was established in Apr. 2012 pursuant to section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Pub. L. 111–203, sec. 911, 124 Stat. 1376, 1822 (2010)] to advise and make recommendations to the Commission on regulatory priorities, the regulation of securities products, trading strategies, fee structures, the effectiveness of disclosure, and initiatives to protect investor interests and to promote investor confidence and the integrity of the securities marketplace.

[21] *See* IAC, *Recommendations of the Investor Advisory Committee Regarding Rule 10b5–1 Plans* (Sept. 9, 2021) (''IAC Recommendations''), available at *https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210916-10b5-1-recommendation.pdf.* The IAC also held a panel discussion regarding Rule 10b5–1 plans at its June 10, 2021 meeting. *See* IAC, *Meeting Minutes* (June 10, 2021), available at *https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061021-minutes.pdf.* The IAC did not consider issuer share repurchases in its deliberations on its recommendations. *See* IAC Recommendations, at n. 1. However, in response to the Commission's request for comment regarding Item 703 in the Commission's 2016 concept release regarding business and financial disclosures required by Regulation S–K, *see Business and Financial Disclosure Required by Regulation S–K,* Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)], the IAC recommended expanding the disclosure required by Item 703. *See* letters in response to the Concept Release from SEC Investor Advisory Committee (Jun. 15, 2016), available at *https://www.sec.gov/comments/s7-06-16/s70616.htm.*

• Foreign private issuers (''FPIs'') [22] reporting on the FPI forms [23] to disclose daily quantitative repurchase data at the end of every quarter in the new Form F–SR,[24] which will be due 45 days after the end of an FPI's fiscal quarter.

As proposed, the final amendments require an issuer to include a checkbox above its tabular disclosures indicating whether certain officers and directors purchased or sold shares or other units of the class of the issuer's equity securities that are the subject of an issuer share repurchase plan or program before or after the announcement of an issuer repurchase plan or program. In a change from the proposal, we have revised the checkbox requirement so that an issuer must check the box if the triggering trades occur within four business days before or after the repurchase announcement, rather than the ten business days we proposed. For domestic corporate issuers and Listed Closed-End Funds, this checkbox requirement applies to any officer or director subject to the 15 U.S.C. 78p(a) (''Exchange Act section 16(a)'') reporting requirements. In another change from the proposal, for FPIs, this requirement applies to any director and member of senior management who would be identified pursuant to Item 1 of Form 20–F, regardless of whether the FPI is reporting on the forms exclusively available to FPIs or on the domestic forms.[25] In a further change from the proposal, the daily quantitative repurchase data required by the final amendments will be treated as filed in Form 10–Q, Form 10–K, Form N–CSR, and Form F–SR, instead of furnished. Further, the final amendments eliminate the current requirements in Item 703 of Regulation S–K, Item 16E of Form 20–F, and Item 14 of Form N–CSR to disclose monthly repurchase data in periodic reports.

We are also adopting, with some modifications from the proposal, amendments relating to the revision and expansion of the disclosure requirements in Item 703, Form 20–F, and Form N–CSR. Specifically, the final amendments require an issuer to disclose:

• The objectives or rationales for its share repurchases and the process or criteria used to determine the amount of repurchases; and

• Any policies and procedures relating to purchases and sales of the issuer's securities during a repurchase program by its officers and directors, including any restriction on such transactions.

We are also adopting new Item 408(d), which requires quarterly disclosure in periodic reports on Forms 10–Q and 10–K (for the issuer's fourth fiscal quarter) about an issuer's adoption and termination of Rule 10b5–1 trading arrangements. This information will also be reported using Inline XBRL.

II. Background

A. Share Repurchases

As the Commission noted in the Proposing Release, issuers may repurchase their shares through, among other means, open market purchases, tender offers, privately negotiated transactions, and accelerated share repurchases (''ASRs''). Issuers typically disclose repurchase plans or programs at the time that the share repurchases are authorized by the board of directors. Most share repurchases are executed over time through open market purchases. Issuers are not required to, and typically do not, disclose the specific dates on which they will execute trades pursuant to an announced repurchase plan or program.

There are a number of reasons why issuers conduct share repurchases, and share repurchases can have a positive or negative impact on the market for an issuer's securities. The high dollar volume, nearly $950 billion in 2021, of recent share repurchase activity has been accompanied by public interest in corporate payouts in the form of share repurchases.[26] Existing studies, including a review by Commission staff in 2020,[27] have considered the rationales and effects of repurchases. As our staff concluded, repurchases are often employed in a manner that may be aligned with shareholder value maximization. Together with dividends, repurchases provide an avenue for returning capital to investors, which may be efficient if the issuer has cash it cannot efficiently deploy. Such returns of capital may also send signals to investors that managers are operating the issuer efficiently rather than retaining excess cash for potentially suboptimal use.

Repurchases also have some unique features that are not easily replicated through dividend payments, such as potential tax advantages for some investors, repurchases' greater perceived flexibility, their potential to provide liquidity or price support when an issuer faces downward price pressure, and their effect on the amount of the issuer's shares outstanding (which may in turn mitigate dilutive effects of other share issuances or favorably adjust an issuer's leverage ratio).[28] Importantly, and as we discuss further below, because investors understand that repurchases reflect managers' judgment about whether current prices accurately reflect the issuer's fundamental value, and consume cash that could otherwise be used for other purposes, repurchases can provide a relatively credible signal of the issuer's view that its stock is undervalued.[29] However, as noted in the Proposing Release,[30] and by several commenters,[31] share repurchases may be at least partially motivated by factors other than long-term value maximization.

---

[22] ''Foreign private issuer'' is defined in 17 CFR 230.405 (''Securities Act Rule 405'') and 240.3b–4 as any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) Any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) More than 50 percent of the assets of the issuer are located in the United States; or (iii) The business of the issuer is administered principally in the United States.

[23] The Commission has adopted a series of forms exclusively available to FPIs, including the ''F-'' series registration statements and Forms 20–F and 6–K disclosure forms for annual and current reports, respectively. These forms have been designed with reference to international disclosure standards, both in scope and timing requirements for filing. Although FPIs may voluntarily choose to register and report using domestic forms, most do not do so. Unless otherwise specified, all references to FPIs assume they are not filing on the domestic forms.

[24] Only FPIs may file their share repurchase disclosures on the new form, so we are designating the new form as ''Form F–SR'' instead of ''Form SR'' to make it clear that this form is filed only by FPIs.

[25] *See infra* note 322 and accompanying text.

[26] *See* Section V.A.2, *infra.*

[27] *See Response to Congress: Negative Net Equity Issuance* (Dec. 23, 2020) (''2020 Staff Study''), *available at https://www.sec.gov/files/negative-net-equity-issuance-dec-2020.pdf.* Staff reports, statistics, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person. The Commission has expressed no view regarding the analysis, findings, or conclusions contained therein.

[28] *See* Bonaimé, A.A. & Kahle, K.M., *Share Repurchases,* in Handbook of Corporate Finance (B. Espen Eckbo ed., forthcoming 2023) (''Bonaimé and Kahle (2023)'') and Farre-Mensa, J., Michaely, R., & Schmalz, M. *Payout Policy,* 6 Ann. Rev. Fin. Econ. 75 (2014) (''Farre-Mensa *et al.* (2014)'').

[29] *See* Bonaimé and Kahle (2023), *supra* note 28. For more detailed discussion of this literature, *see infra* Section V.A.2. and *infra* notes 402–403 and accompanying text.

[30] *See* Proposing Release, *supra* note 2, at 8444–8446.

[31] *See, e.g.,* letters from Professor Alex Edmans (May 9, 2022) (''Prof. Edmans'') and Professor Robert J. Jackson, Jr., Dr. Edwin Hu, and Dr. Jonathon Zytnick (Jun. 27, 2022) (''Prof. Jackson, Dr. Hu, and Dr. Zytnick'').

At present, because issuers are not required to report daily repurchase transactions or provide additional qualitative disclosures about those transactions, it can be difficult to determine whether repurchase timing may have been motivated, at least in part, by factors other than long-term value maximization. For example, issuer repurchases may be influenced, in part, by a desire to achieve certain accounting metrics or for other potentially suboptimal reasons.[32] Some research has found that issuers that would have narrowly missed an earnings per share (''EPS'') target were more likely to have engaged in repurchases,[33] which through their mechanical effect of decreasing the denominator of that measure help such issuers to meet their target.

The fact that repurchases can significantly impact executive compensation for some issuers may also affect how managers choose to employ repurchases. Like all investors, executives who receive equity-linked compensation stand to benefit from repurchases that improve their employer's long-term stock price, but in some cases executives may realize additional gains unavailable to other investors because of trading by executives or the structure of compensation to those executives. Some studies have found personal trading by insiders close in time to predictable changes in share price caused by repurchases or repurchase-plan announcements, such as concentrated sales in the period immediately following the issuer's repurchase.[34] Issuers may also adjust the timing of their repurchases or repurchase announcements to increase the returns on insider equity sales.[35] In these cases, by timing their sales to closely follow issuer purchases, executives can benefit in ways that confer a personal benefit to executives without necessarily increasing the value of the firm.[36] Thus, equity-based or EPS-tied compensation arrangements could potentially be one factor that may influence some executives' decisions to undertake repurchases.[37] Shareholders may not have sufficient information about all of these possible purposes and impacts of issuer repurchases.

Some commenters who opposed the proposed amendments questioned the premise that stock repurchases are deliberately used to enhance executive compensation or otherwise benefit insiders looking to sell their shares.[38] One of these commenters stated that ''[c]oncerns about companies' using share repurchases to impact earnings per share ('EPS') or executive compensation are unfounded and ignore existing protections,'' and pointed to recent academic work that, in the commenter's view, undermines the premise that executives undertake repurchases to boost their compensation.[39] To the extent that opposing commenters interpret this research to mean that opportunism or self-interest cannot be a significant motivating factor for share repurchases, we disagree with their assessment of the underlying evidence.[40] In this regard,

[32] *See* Graham J.R., Harvey, C.R. & Rajgopal, S., *The Economic Implications of Corporate Financial Reporting,* 40 J. Acct. & Econ. 3 (2005) (reporting that about 12 percent of surveyed executives would use repurchases to meet an earnings forecast); *see also* Rulemaking Petition 4–746, *Rulemaking Petition Requesting Repeal and Reform of Rule 10b–18 to Address Manipulative Repurchase Programs that Harm Workers,* at 4 (June 25, 2019), *available at https://www.sec.gov/rules/petitions/2019/petn4-746.pdf* (citing research that repurchases can be used to inflate share price and EPS-linked executive compensation) (''Rulemaking Petition 4–746''). The 2020 Staff Study found that, while a majority of the issuers included in the study either did not have EPS-linked compensation targets or had EPS targets but their board considered the impact of repurchases when determining whether performance targets were met or in setting the targets, approximately 18 percent of repurchasing issuers made compensatory awards based in part on EPS. *See* 2020 Staff Study, *supra* note 27. Other studies have considered repurchasing issuers that employed EPS or similar measures for other internal evaluations, such as promotion or retention, *see* Bennett, B. *et al., Compensation Goals and Firm Performance,* 124 J. Fin. Econ. 307, 310, 325 (2017) (reporting that executives who just miss performance thresholds are less likely to be retained), and for the purposes of creditors or outside analysts, *see* Kurt, A. C., *Managing EPS and Signaling Undervaluation as a Motivation for Repurchases: The Case of Accelerated Share Repurchases,* 17 Rev. Acct. & Fin. 453 (2018) (noting that executives manage EPS in order to satisfy creditors and suppliers, among other reasons) (''Kurt''). For additional academic research on the use of repurchases as a method of real earnings management, *see infra* notes 416–420 and accompanying text.

[33] *See* Almeida, H., Fos, V., & Kronlund, M., *The Real Effects of Share Repurchases,* 119 J. Fin. Econ. 168 (2016) (''Almeida *et al.* (2016)'') and Hribar, P., Jenkins, N., & Johnson, W.B., *Stock Repurchases as an Earnings Management Device,* 41 J. Acct. & Econ. 3 (2006) (''Hribar *et al.* (2006)'').

[34] *See* Jackson, Jr., R.J., *Stock Buybacks and Corporate Cashouts,* Speech by Commissioner Jackson Before the Center for American Progress (June 11, 2018), *available at https://www.sec.gov/news/speech/speech-jackson-061118* (''Jackson Speech''); Ben-Raphael, A., Oded, J., & Wohl, A., *Do Firms Buy Their Stock at Bargain Prices? Evidence from Actual Stock Repurchase Disclosures,* 18 Rev. Fin. 1299 (2014); Edmans, A., Fang, V.W., & Huang, A. H., *The Long-Term Consequences of Short-Term Incentives,* 60 J. Acct. Res. 1007, 1024 (2022) (''Edmans *et al.* (2022)''); Moore, D., *Strategic Repurchases and Equity Sales: Evidence from Vesting Schedules,* 146 J. Banking & Fin. 106717 (2023) (''Moore''); Wang, Z., Yin, Q.E., & Yu, L., *Real Effects of Share Repurchases Legalization on Corporate Behaviors,* 140 J. Fin. Econ. 197 (2021); *see also* Cziraki P., Lyandres, E., & Michaely, R., *What Do Insiders Know? Evidence from Insider Trading Around Share Repurchases and SEOs,* 66 J. Corp. Fin. 101544 (2021) (''Cziraki *et al.* (2021)'') (finding that insider sales decline ahead of repurchases). One commenter provided us with economic analysis by Professors Lewis and White disputing the findings from Commissioner Jackson's Speech. *See* letter from U.S. Chamber of Commerce (Apr.1, 2022) (''Chamber II''). *But see* letter from Prof. Jackson, Dr. Hu, and Dr. Zytnick in response (asserting that Lewis and White's analysis of the Jackson data confirms, rather than undermines, the Jackson conclusion).

[35] *See* Edmans *et al.* (2022), *supra* note 34*; see also* Edmans, A., Goncalves-Pinto, L., Groen-Xu, M., & Wang, Y., *Strategic News Releases in Equity Vesting Months,* 31 Rev. Fin. Stud. 4099 (2018) (''Edmans *et al.* (2018)'') (reporting that firms disproportionately release positive news items, including buyback announcements, in months when CEO equity vests) and Moore, *supra* note 34.

[36] *See* Edmans *et al.* (2022), *supra* note 34*; see also* Moore, *supra* note 34, at 2 (reporting that author's findings are ''consistent with managers strategically using share repurchases to personally benefit from the positive effects of repurchasing on the stock price'').

[37] Edmans *et al.* (2022), *supra* note 34, at 1010, 1034 (noting their findings ''are consistent with the CEO announcing repurchases to falsely signal undervaluation to the market to improve the conditions for his equity sales''); *see also* Kurt, *supra* note 32 (finding evidence that ''managerial incentives—securing bonuses and maintaining reputations by avoiding EPS misses—potentially lie behind the opportunistic use'' of some share repurchases). For a further discussion of the use of repurchases to potentially influence compensation tied to per-share measures, *see infra* note 422.

[38] *See* letters from Chamber II and Craig M. Lewis, Professor of Law and Joseph T. White, Assistant Professor of Finance, Vanderbilt University (Oct. 7, 2022) (''Profs. Lewis and White'').

[39] *See* letter from Profs. Lewis and White. Among other research, Profs. Lewis and White cite Guest, N., Kothari, S.P., & Venkat, P., *Share Repurchases on Trial: Large-Sample Evidence on Share Price Performance, Executive Compensation, and Corporate Investment, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4149796,* at 16 (Jan. 2023) (''Guest *et al.*'') (asserting that the study's findings that repurchases do not distort prices ''helps rule out [the] possibility'' that insiders can ''sell a portion of their shares at prices that are inflated due to a buyback'') and PWC, *Share Repurchases, Executive Pay and Investment,* BEIS Research Paper Number 2019/11, *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817978/share-repurchases-executive-pay-investment.pdf* (finding that in the U.K. there is no or only weak evidence that repurchases are used to achieve EPS targets).

[40] For example, with respect to Guest *et al., supra* note 39, as the authors of the study report, large repurchasers enjoy superior returns in the quarter after repurchase, *id.* at 15, but perform similarly to non-repurchasers in the following year, *id.* at 16. This may be consistent with short-term gains from EPS or other manipulation that are dissipated as more complete information becomes available to the market, as the researchers appear to acknowledge in a footnote, *see id.* at 16 n.19. Such changes in value would create opportunities for executives to profit from trades close in time to repurchases. In addition, the authors focus only on behavior of the largest or most frequent repurchasers, and market-wide correlations estimated based on those issuers are not necessarily probative of the behavior of the issuers who stand to benefit most from small changes in EPS. We are thus more persuaded by the studies that do find opportunities for executives to profit from repurchases. *See supra* note 34. Similarly, with respect to the PWC study, *supra* note 39, we note that the U.K. has required next-day reporting of

we share the assessment of other commenters who argued that the research cited by opposing commenters does not undermine the proposition that personal benefit may be a factor in determining whether to undertake a share repurchase.[41]

Moreover, we believe opposing commenters have misconstrued the nature of the concern the proposed amendments sought to address. As explained below, it is not necessary to find that opportunism drives the timing of most issuer share repurchases to conclude that it is appropriate for investors to have more useful information about such repurchases. Indeed, as the author of several of the studies cited by these commenters observed, personal benefit may not be ''the only, or even most important, factor (as the terms 'manipulation' or 'opportunism' would suggest) but it may be a consideration. Thus, one does not need to believe that share buybacks are used for manipulation—a high hurdle—to find merit in the SEC's proposal.'' [42] While this commenter specifically referenced the proposal to require disclosure of any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors, we believe all of the quantitative and qualitative disclosure requirements that we are adopting in this release together will serve to alert investors to the possibility of repurchases being motivated, at least in part, by goals unconnected to increasing shareholders value or signaling the issuer's view that its stock is undervalued.[43]

Currently, investors cannot readily determine the purposes behind any given share repurchase, and this uncertainty may have adverse effects on investors and markets. When managers may personally benefit from repurchases or their timing, it is not as evident, for example, that a repurchase is intended to distribute excess cash or signal management's views about the issuer's fundamental value, rather than to benefit the manager personally. Similarly, if issuers may adjust the volume or timing of repurchases to reach certain accounting targets or for other reasons that are not intended to signal management's views about the firm's value or to return excess cash, such as protecting the issuer's reputation or managing relationships with customers or suppliers, some of which may even run counter to the interest of shareholders, the signal sent by all repurchases is muddied. This market failure may make it more difficult for investors to value a company or identify when an issuer's use of cash is well-managed, reducing investor confidence and market liquidity.[44]

The additional disclosures that we are adopting, including of daily quantitative repurchase data, will provide investors with enhanced information to assess the purposes and effects of repurchases, including whether those repurchases may have been taken for reasons that may not increase an issuer's value. At the same time, we are mindful that any enhanced disclosure requirements will come at a cost for issuers, and ultimately shareholders, and should be appropriately tailored to address their intended aims. For those reasons, as discussed more fully below, we have made certain changes to the final amendments to help limit the compliance burden on issuers while still providing investors with the information they need to better assess the efficiency of, and motives behind, issuer repurchases.

B. Purpose of the Amendments

As we have just described, issuers repurchase shares for multiple reasons. In many cases, share repurchases may represent an efficient use of the issuer's capital, such as when returning money to shareholders exceeds other possible internal investments of capital.[45] However, some uses of share repurchases may not be efficient, such as repurchases conducted to increase management compensation or to affect various accounting metrics, in either case when those actions do not increase the value of the firm.[46]

Current repurchase disclosure requirements, which do not require the issuer to provide quantitative daily repurchase information or state the objectives or rationales for its repurchases and are reported in the aggregate at the monthly level, provide investors with insufficient insight into the efficiency, purposes, and impacts of an issuer's share repurchases. This frustrates the ability of investors to separate out and assess the different motivations and impacts of share repurchases. We have determined that additional disclosures are needed to remedy these market failures.

Given common frictions on voluntary reporting of this information, including the strong possibility of significant divergences in the interests of managers and other investors, we believe mandatory disclosures are necessary to overcome these informational asymmetries between issuers and their managers on the one hand and investors on the other. The additional qualitative disclosures we are adopting will provide investors with additional information about the structure of an issuer's repurchase program and its share repurchases that will enable them to better understand how and why those repurchases are conducted. The qualitative disclosures, when combined with the daily repurchase activity disclosure, will allow investors to draw clearer and more informed conclusions about the purposes and effects of share repurchases.

The current reporting regime, in which investors receive information only about the monthly aggregate repurchases of issuers, fails to provide enough detail for investors to draw informed conclusions about the purposes and effects of many repurchases. In contrast, the amendments we are adopting will provide investors with data about the daily repurchase activity of an issuer and additional qualitative disclosures that investors can combine with other disclosures, such as the timing of compensatory awards or executive equity transactions, to observe whether a given repurchase was apt to affect executive compensation. Data on daily transactions and the additional qualitative disclosures would also reveal patterns in which repurchases were undertaken at times or under conditions that were likely to affect imminent accounting metrics, or prior

repurchases since 1981, which may discourage issuers from attempting to manipulate accounting metrics with repurchases, because daily data would reveal instances where repurchases were undertaken at a time when it was obvious to management they would otherwise miss an EPS target.

The opposing commenters also point to research suggesting that insider sales following a repurchase or repurchase announcement are due to coincidences of the corporate calendar (*i.e.,* repurchases occurring near in time to the expiration of blackout periods), not deliberate efforts by insiders to benefit from repurchase activity. *See* letter from Chamber II (citing Dittmann, I., Lu, A. Y., Obernberger, S., & Zheng, J. *The Corporate Calendar and the Timing of Share Repurchases and Equity Compensation,* Working paper (2022) (''Dittmann *et al.* (2022)''). But as another commenter observed: ''it does not matter if the equity sales are 'mechanical' due to occurring after the end of a blackout period, or 'voluntary'. If the CEO knows that she will be able to sell equity, due to the blackout period ending, this may still influence her buyback decision.'' *See* letter from Prof. Edmans.

[41] *See* letters from Prof. Jackson, Dr. Hu, and Dr. Zytnick and Prof. Edmans.

[42] *See* letter from Prof. Edmans.

[43] *See id.*

[44] We discuss in more detail the market failures addressed by the amendments in the Economic Analysis section, below. *See infra* Section V.B.1.

[45] *See supra* notes 27–29 and accompanying text.

[46] *See supra* notes 30–33 and accompanying text.

to the release of material nonpublic information by the issuer. Investment advisers may use this data in assisting investors in assessing the purposes and effects of share repurchases.

Requiring that issuers provide disclosures of daily share repurchases as well as qualitative data will better enable investors to assess the efficiency, purposes, and impacts of share repurchases. These disclosures will allow investors to better evaluate whether a share repurchase was intended to increase the value of the firm or represented an inefficient deployment of capital, such as by either providing additional compensation to management or impacting accounting metrics in ways that were not intended to increase overall firm value. Disclosures of daily repurchase data and qualitative disclosures may indicate that management may have timed share repurchases in order to meet certain earnings goals or targets, to support insiders' trading positions or to otherwise increase insider compensation. Enhancing the ability of investors to assess the efficiency, purposes, and impacts of issuer repurchases would benefit investors and could improve market efficiency and capital formation.

Accordingly, the purpose of these amendments is to improve the information investors receive to better assess the efficiency of, and motives behind, an issuer repurchase. In proposing to amend Item 703, the Commission expressed the view that enhanced disclosure about share repurchases would allow investors to ''[b]etter understand an issuer's motivation for its share repurchase.'' [47] In this way, the proposed amendments aimed to assist investors in distinguishing between share repurchases intended to increase shareholder value or signal the issuer's view that its stock is undervalued and those that instead were at least, in part, ''potentially motivated by short-term attempts to boost the share price'' or to achieve other inefficient objectives.[48] In the case where repurchases may increase the value of managers' compensation, for instance, one commenter stated that ''[enhanced] disclosure is useful because it alerts the market to the possibility of buybacks being at least partially influenced by the CEO's equity sales.'' [49] We agree and, with the benefit of the comments received on the proposed amendments, continue to believe that an investor's ability to assess the impact of a given repurchase depends in part on having the information necessary to evaluate the purposes for which the repurchase was undertaken.

We understand that issuers may employ open-market stock repurchases to credibly signal to investors the issuer's view of the stock's fundamental value.[50] The possibility that repurchases may be, in part, motivated by goals unconnected to the issuer's fundamental value, such as the manager's compensation or reputation or achieving accounting metrics required by creditors or expected by analysts, would reduce the credibility of such signals, even among issuers whose repurchases are solely intended to signal management's view of the issuer's value. Similarly, due to asymmetries in information between the issuer and investors, investors cannot typically observe directly whether a repurchase represented an efficient use of excess cash aimed at increasing the issuer's value. Thus, the possibility that some repurchases are motivated by reasons other than shareholder value maximization complicates investor efforts to make this determination absent additional information not currently required to be disclosed.

Further, as we noted in the Proposing Release,[51] and as described above, there is evidence from which investors could reasonably conclude that some repurchases are at least in part motivated by goals such as executive compensation or achieving certain accounting targets. Thus, as the Commission stated, ''it can be difficult for investors to determine whether the undertaken repurchases were efficient and aligned with shareholder value maximization, or were at least in part driven by self-interested behavior of corporate insiders rather than shareholder interest.'' [52] Accordingly, we believe that investors should have sufficient information about how issuers conduct repurchases to make informed judgments about the likely purposes and effects of the repurchases, including whether such repurchases provide credible information about the value of the issuer.

We acknowledge that many, perhaps even most, share repurchases are not undertaken solely or primarily to benefit managers or to achieve targets, such as those based on EPS. Indeed, as commenters noted, Commission staff have previously assessed that it is ''unlikely'' that a ''majority'' of repurchases are so motivated, and instead that ''most'' repurchases are consistent with shareholder value maximization.[53]

That fact, however, does not aid investors who are attempting to assess the efficiency of, and information conveyed by, any given repurchase by a particular issuer.[54] Given the opportunity for repurchases to affect executive compensation or help an issuer to achieve certain accounting measures, as well as the evidence that some repurchases do so, investors cannot currently be certain that any given repurchase in fact conveys information about the issuer's fundamental value. Thus, as the Commission explained in the Proposing Release, additional disclosures would, for example, ''help investors gauge whether . . . repurchases may be motivated by price support for insiders' sales of their securities, rather than conveying a true signal of undervaluation.'' [55] In this regard, we agree with the observations of a commenter who compared this rationale to disclosure requirements for potentially self-interested financial advisors where disclosure allows a client to ''take into account the possibility of a conflict.'' [56]

Further, even efficient repurchases have the potential to negatively affect investor confidence. As we have described previously, we are concerned that, in some cases, issuers may repurchase their stock while the relevant decision makers are aware of material nonpublic information.[57] Because issuers are repurchasing their

[47] Proposing Release, *supra* note 2, at 8445.

[48] Proposing Release, *supra* note 2, at 8446 and 8457.

[49] *See* letter from Prof. Edmans.

[50] *See, e.g.,* Asquith, P. & Mullins, Jr. D.W., *Signaling with Dividends, Stock Repurchases, and Equity Issues,* 15 Fin. Mgmt. 27, 33–34 (1986).

[51] *See* Proposing Release, *supra* note 2, at 8444–8445.

[52] Proposing Release, *supra* note 2, at 8455.

[53] *See, e.g.,* letters from Cato Institute (Apr. 1, 2022) (''Cato''), Chamber II, Maryland State Bar Association (Apr. 5, 2022) (''Maryland Bar''), and National Association of Manufacturers (Mar. 31, 2022) (''NAM'').

[54] *See, e.g.,* letters from Better Markets (Apr. 1, 2022) (''Better Markets I'') (noting that ''disclosures will help investors identify 'opportunistic' share repurchases designed primarily to benefit management, not the company'') and Council of Institutional Investors (Mar. 31, 2022) (''CII'') (stating the amendments ''could strengthen the market's ability to assign premia to companies that make capital allocation decisions optimizing the company's long-term performance and assign discounts to companies that do not'').

[55] Proposing Release, *supra* note 2, at 8457.

[56] *See* letter from Prof. Edmans (stating that this is similar to how financial advisors must disclose the commission on products that they are offering to their clients, such that, although the product pays the highest commission to the advisor, it is also in the best interest of the client, so there is no conflict, but the disclosure is useful to allow the client to take into account ''the possibility of'' a conflict).

[57] *See* Rule 10b5–1 Adopting Release, *supra* note 18, at 80362–80363 and 80372.

own securities, asymmetries may exist between issuers and investors with regard to information about the issuer and its future prospects. Investors may be more reluctant to trade in the presence of such informational asymmetries.[58]

In light of these concerns, the concerns expressed by commenters,[59] and our expectation that the volume of share repurchases will continue to be significant, we are persuaded that investors would benefit from additional and more detailed quantitative and qualitative information related to issuer share repurchases. Such disclosures would help investors evaluate the purposes, impacts, and efficiency of share repurchases. Additional information regarding an issuer's repurchase activity may reveal, for instance, whether those repurchases likely affected managers' compensation.

The daily quantitative repurchase data we are requiring will assist investors in understanding the purposes and effects of repurchases. For example, these data will help investors to identify repurchases undertaken close in time to the date on which an accounting measure, such as EPS, is likely to trigger other effects. In many cases, repurchase data aggregated at the monthly level would not be sufficiently detailed to shed light on these patterns. Similarly, daily data may allow investors to determine whether an executive may have sold equity during a month in which there was heavy repurchase activity, and data aggregated at the monthly level leave it unclear whether the sales preceded or followed the bulk of the repurchases.

We recognize that these data will not by themselves establish that a repurchase was undertaken for any particular purpose. As a result, the final amendments also require issuers to provide investors with more detailed qualitative information that they could use to evaluate issuer share repurchases in conjunction with the daily quantitative repurchase data. We believe that the quantitative and qualitative information will work together to help investors to identify repurchases in which efforts to affect compensation or accounting measures may have played a larger role, and help to credibly identify repurchases where such goals were unlikely to have played a significant role.

Detailed reporting could also reveal instances in which an issuer made large repurchases in advance of announcing material nonpublic information or allow investors to more readily observe instances in which share repurchases may have been timed to allow trading while the issuer was aware of material nonpublic information or to benefit from other asymmetries. Investors could consider this information in making future investment decisions with respect to a given issuer. In many instances, reporting of repurchase activity in aggregate monthly amounts, as required by our current requirements, may not be precise enough to reveal patterns in repurchases. Again, we also believe that qualitative information regarding an issuer's purposes for and policies regarding repurchases will further aid investors in understanding these daily quantitative data, and in using them to assess the efficiency of, and motivations for a repurchase.

The amendments require more detailed quantitative and qualitative disclosure about issuer share repurchases, and require issuers to present the disclosure using a structured data language. We believe that the final amendments will promote investor protection by allowing investors to:

- Better understand the extent of an issuer's activity in the market, including potential impacts on the issuer's share price;
- Better understand an issuer's motivation for its share repurchases, and how it has structured and is executing its purchase plan; and
- Gain potential insight into any relationship between share repurchases and executive compensation and stock sales.

III. Discussion of Final Amendments

A. Disclosure of Share Repurchases

1. Proposed Amendments

The Commission proposed new Exchange Act Rule 13a–21 and new Form SR, which would require issuers, including FPIs and certain Listed Closed-End Funds, to report any daily purchase made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer's equity securities that are registered pursuant to Exchange Act section 12.[60] The issuer would be required to furnish the daily detail in Form SR on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system before the end of the first business day following the day on which the issuer executes a share repurchase. The Form SR would require the following disclosure in tabular format, by date, for each class or series of securities:

(1) Identification of the class of securities purchased;

(2) The total number of shares (or units) purchased, including all issuer repurchases whether or not made pursuant to publicly announced plans or programs;

(3) The average price paid per share (or unit);

(4) The aggregate total number of shares (or units) purchased on the open market;

(5) The aggregate total number of shares (or units) purchased in reliance on the Rule 10b–18 non-exclusive safe harbor;[61] and

(6) The aggregate total number of shares (or units) purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c).[62]

The proposed amendments would also require an issuer to disclose material errors or changes to

[58] One commenter suggests that issuers undertake voluntary arrangements that limit their ability to repurchase at a time the relevant decision maker is aware of material nonpublic information, and therefore that the threat of such trading should not serve as a basis for the amendments. *See* letter from Securities Industry and Financial Markets (Apr. 1, 2022) (''SIFMA II''). Other academic research suggests, however, that some issuers conduct repurchases at times they are likely to be aware of material nonpublic information and earn average returns on their trades that are not achieved by other traders. *See* Bonaimé, A.A., Harford, J., & Moore, D., *Payout Policy Tradeoffs and the Rise of 10b5–1 Preset Repurchase Plans,* 66 Mgmt. Sci. 2291 (2020) (reporting that one-third of disclosed issuer 10b5–1 plans begin trading within one day of adoption) (''Bonaimé *et al.* (2020)'').

[59] *See, e.g.,* letters from Amy Lewis (Dec. 15, 2021) (''Lewis''); California Public Employees' Retirement System (Mar. 30, 2022) (''CalPERS''), CFA Institute (Apr. 6, 2022) (''CFA Institute''), CII, and Form Letter A.

[60] Currently, registered investment companies other than Listed Closed-End Funds are not required to provide the repurchase disclosure under Item 703 of Regulation S–K as implemented in Form N–CSR. Accordingly, proposed Form SR also would not be filed by registered investment companies other than Listed Closed-End Funds. Business development companies, which are not registered investment companies, provide the repurchase disclosure of Item 703 on Forms 10–K and 10–Q rather than Form N–CSR.

[61] Rule 10b–18 provides issuers with a safe harbor from liability for manipulation under 15 U.S.C. 78i(a)(2) (''Exchange Act section 9(a)(2)'') and 15 U.S.C. 78j(b) (''Exchange Act section 10(b)'') when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions. The proposed disclosure would not provide a defense to manipulative conduct for purchases that are not in fact eligible to rely on the safe harbor.

[62] The Commission adopted Rule 10b5–1 in 2000 to clarify the meaning of ''manipulative or deceptive device[s] or contrivance[s]'' prohibited by Exchange Act section 10(b) and Rule 10b–5 with respect to trading on the basis of material nonpublic information. *See Selective Disclosure and Insider Trading,* Release No. 33–7881 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)]. Rule 10b5–1(c) established an affirmative defense to Rule 10b–5 liability for insider trading in circumstances where it is clear that the trading was not based on material nonpublic information and the trade was pursuant to a binding contract, an instruction to another person to execute the trade for the instructing person's account, or a written plan.

information previously reported on an amended Form SR, which the Commission indicated would allow for timely and accurate disclosure the day after execution of the share repurchase order, with the ability to make corrections, if needed, in amended filings. Additionally, the Commission proposed to require issuers to furnish, rather than file, Form SR. As a result, issuers would not be subject to liability under 15 U.S.C. 78r (''Exchange Act section 18'') for the disclosure in the form, and the information would not be deemed incorporated by reference into filings under the Securities Act and thus would not be subject to liability under 15 U.S.C. 77k (''Securities Act section 11''), unless the issuer expressly incorporated such information.[63]

2. Comments on the Proposed Amendments

a. Comments on the Daily Share Repurchase Disclosure Requirement

Although there was substantial opposition to the proposal,[64] several commenters generally supported the proposed daily repurchase disclosure.[65] Some of the commenters that supported the proposed amendments asserted that they would reduce information asymmetries between issuers and investors,[66] which would result in ''greater confidence that they can find accurate, comprehensive information about a security and the broader investment field.'' [67] Other commenters stated that daily disclosure of share repurchases would increase transparency.[68]

Some commenters asserted that issuers would be able to comply with the proposed requirement to provide daily repurchase disclosure one business day after execution of an issuer's share repurchase order because issuers already comply with these types of strict deadlines in other markets, and section 16 insiders must report their purchases and sales within two business days.[69] Other commenters suggested that the costs of the proposed amendments would be minimal,[70] with one commenter noting that, at most, the proposed amendments would be ''a minor incremental administrative burden.'' [71] Some commenters indicated that the proposed amendments would enable the Commission to determine issuers' compliance with the Rule 10b–18 safe harbor.[72] One form comment letter asserted that such daily disclosure would reduce the amount of time that insiders know of a repurchase while other investors remain ignorant and ''give the Commission the tools to enforce existing laws.'' [73]

Many commenters opposed the proposal due to the proposed requirement that issuers provide daily repurchase disclosure one business day after execution of an issuer's share repurchase order.[74] Some of these commenters indicated that existing disclosure rules require near real-time trading information only in situations involving changes in corporate control or trading by insiders,[75] and share repurchase activity does not carry the same signaling value as those situations.[76] Other commenters asserted that the justification for the one business day requirement is not

[63] In addition, by requiring the Form SR to be furnished, a late submission of the form would not affect eligibility to use Form S–3 or to file a short-form registration statement under General Instruction A.2 of Form N–2. General Instruction I.A.3(b) to Form S–3 requires that all reports required to be filed with the Commission during the preceding 12 months have been filed; the same requirements apply under General Instruction A.2 of Form N–2.

[64] *See, e.g.,* letters from American Bar Association, Federal Regulation of Securities Committee (Apr. 13, 2022) (''ABA Committee''); American Council of Life Insurers (Feb. 22, 2022) (''ACLI''); ASA; Bank Policy Institute & American Bankers Association (Apr. 1, 2022) (''BPI & Amer. Bankers Assoc.''); Cato; Chamber II; Chevron Corporation (Mar. 31, 2022) (''Chevron''); Coalition of Business Trades (Apr. 1, 2022) (''Coalition''); Cravath, Swaine & Moore LLP (Mar. 31, 2022) (''Cravath''); Davis Polk & Wardwell LLP (Mar. 28, 2022) (''Davis Polk''); DLA Piper LLP (Apr. 1, 2022) (''DLA Piper''); Dow Inc. (Apr. 1, 2022) (''Dow''); FedEx Corporation (Apr. 1, 2022) (''FedEx''); Fenwick & West LLP (Mar. 31, 2022) (''Fenwick''); Guzman & Company (Mar. 28, 2022) (''Guzman''); Home Depot, Inc. (Apr. 1, 2022) (''Home Depot''); HP Inc. (Apr. 1, 2022) (''HP''); Institute for Portfolio Alternatives (Mar. 28, 2022) (''IPA''); International Bancshares Corporation (Apr. 1, 2022) (''IBC''); Jones Day (Mar. 31, 2022) (''Jones Day''); Keith Paul Bishop, former California Commissioner of Corporations (Apr. 6, 2022) (''Bishop''); Maryland Bar; NAM; Norfolk Southern Corporation (Mar. 31, 2022) (''Norfolk Southern''); NYSE Group, Inc. (Apr. 1, 2022) (''NYSE''); Paul, Weiss, Rifkind, Wharton & Garrison LLP (Apr. 1, 2022) (''Paul Weiss''); Pennsylvania Chamber of Business and Industry (Apr. 1, 2022) (''PA Chamber''); PNC Financial Services Group (Mar. 30, 2022) (''PNC''); Profs. Lewis and White; PSC; Quest Diagnostics (Apr. 1, 2022) (''Quest''); Shearman & Sterling LLP (Apr. 1, 2022) (''Shearman''); SIFMA II; Simpson Thacher & Bartlett LLP (Mar. 31, 2022) (''Simpson Thacher''); Society for Corporate Governance (Apr. 1, 2022) (''SCG''); Sullivan & Cromwell (Apr. 1, 2022) (''Sullivan''); T. Rowe Price (Mar. 30, 2022) (''T. Rowe Price''); Virtu Financial (Mar. 29, 2022) (''Virtu''); Vistra Corp. (Apr. 1, 2022) (''Vistra''); and Wilson Sonsini Goodrich & Rosati (Apr. 18, 2022) (''Wilson Sonsini'').

[65] *See, e.g.,* letters from Alex Hanson-Michelson (Oct. 18, 2022) (''Hanson-Michelson''); Americans for Financial Reform Education Fund *et al.* (Apr. 1, 2022) (''AFREF *et al.*''); Amy (Oct. 23, 2022) (''Amy''); Anonymous (Oct. 29, 2022) (''Anonymous V''); Anonymous (Oct. 30, 2022) (''Anonymous VI''); Anonymous, Retail Investor (Dec. 26, 2022) (''Anonymous VII''); Arun R. (Oct. 8, 2022) (''Arun''); Better Markets I; Better Markets (Jan. 11, 2023); BrilLiquid LLC (Apr. 1, 2022) (''BrilLiquid''); CalPERS; Calvin Satterfield (Jan. 13, 2023) (''Satterfield''); CFA Institute; CII; David B. (Oct. 9, 2022) (''David''); David Jaggard (Oct. 13, 2022) (''Jaggard''); Richard L. Hecht, Adubon Consulting Group (Jan. 27, 2022) (''Hecht''); International Corporate Governance Network (Mar. 31, 2022) (''ICGN''); James Lutes (Jan. 10, 2023) (''Lutes''); James Mahr (Oct. 8, 2022) (''Mahr''); Joe Hernandez (Oct. 30, 2022) (''Hernandez''); Joseph Krugel (Oct. 30, 2022) (''Krugel''); Kayden Fox (Oct. 8, 2022) (''Fox''); Lewis; Marc Pentacoff (Dec. 23, 2021) (''Pentacoff''); Mike Kerr (Aug. 16, 2022) (''Kerr''); North American Securities Administrators Association, Inc. (Apr. 1, 2022) (''NASAA''); National Employment Law Project (Apr. 1, 2022) (''NELP''); Oxfam America (Apr. 1, 2022) (''Oxfam''); Professor Lenore Palladino, UMass Amherst (Mar. 30, 2022) (''Prof. Palladino''); Prof. Jackson, Dr. Hu, and Dr. Zytnick; Public Citizen (Apr. 1, 2022) (''Public Citizen''); Roosevelt Institute (Mar. 31, 2022) (''Roosevelt''); Stephen, Consultant (Dec. 29, 2022) (''Stephen''); Stephane Mans (Jan. 12, 2023) (''Mans''); U.S. Senators Marco Rubio and Tammy Baldwin (Apr. 1, 2022) (''Senators Rubio & Baldwin''). Additionally, Form Letter A supported the proposal.

[66] *See, e.g.,* letters from CFA Institute and Lewis.

[67] *See* letter from Lewis.

[68] *See, e.g.,* letters from Amy, Anonymous V, Anonymous VI, Anonymous VII, Andrew (Dec. 26, 2022), Arun, CalPERS, David, D.L. (Jan. 11, 2023), Fox, Hanson-Michelson, Hernandez, Jaggard, Kerr, Krugel, Lutes, Mahr, Mans, Satterfield, and Stephen.

[69] *See, e.g.,* letters from CalPERS and ICGN.

[70] *See e.g.,* letters from Better Markets I, CFA Institute, and Prof. Palladino (stating that the costs of daily reporting ''should be minimal given the well-established regular reporting of other financial metrics to the Commission, and the fact that companies are already reporting aggregate stock buybacks data, which must be determined from micro-level data'').

[71] *See* letter from CFA Institute.

[72] *See, e.g.,* letters from NELP, Prof. Palladino, and Roosevelt. These commenters were generally concerned about issuers manipulating the market for their securities through buybacks executed not in accordance with the Rule 10b–18 safe harbor.

[73] *See* letter from Form Letter A.

[74] *See, e.g.,* letters from ACCO Brands Corporation (Mar. 30, 2022) (''ACCO''), ACLI, ASA, Bishop, BPI & Amer. Bankers Assoc., Business Roundtable (Apr. 1, 2022) (''Business Roundtable''), Cato, Chamber II, Chamber III, Chevron, Coalition, Cravath, Davis Polk, DLA Piper, Dow, Ed Armstrong (Dec. 28, 2021) (''Armstrong''), Empire State Reality Trust (Mar. 29, 2022) (''Empire''), FedEx, Guzman, Hecht, Home Depot, HP, IBC, Jones Day, Kirkland & Ellis LLP (Apr. 1, 2022) (''Kirkland Ellis''), Maryland Bar, NAM, Norfolk Southern, NYC Bar, NYSE, PA Chamber, Paul Weiss, Pay Governance (Jan. 24, 2022) (''Pay Governance''), PNC, Profs. Lewis and White, Quest, SCG, Shearman, SIFMA II, Simpson Thacher, Stephens, Stuart Kaswell, Esq. (Mar. 18, 2022) (''Kaswell''), Sullivan, T. Rowe Price, Virtu, Vistra, and Wilson Sonsini. One of these commenters stated that, because investors only see earnings quarterly, management's attempt to use repurchases to affect their pay would only been detected quarterly, and daily disclosures would not help. *See* letter from Profs. Lewis and White.

[75] *See, e.g.,* letters from Davis Polk (stating that ''only in cases involving potential changes in corporate control—where the information called for by Schedule 13D is plainly necessary to allow investors to make informed investment decisions—and in cases involving trading by officers, directors and ten percent shareholders, whose trading may signal changes in insider sentiment and corporate prospects unknown to the public market'') and T. Rowe Price.

[76] *See* letter from Davis Polk.

evident.[77] A number of commenters asserted that the proposed amendments would increase costs without a corresponding benefit.[78] Some commenters suggested that daily repurchase disclosures could cause investors to misinterpret an issuer's day-to-day changes in trading activity,[79] which could result in unjustified stock price volatility [80] or the disruption of confidential merger or acquisition discussions.[81] Additionally, although some commenters suggested that investors might use daily disclosure data to identify the issuer's trading strategies,[82] other commenters observed that a move to periodic reporting should substantially mitigate any such concern.[83]

Several commenters claimed that daily disclosures would result in an overload of information [84] that would be too disaggregated for retail investors to easily parse.[85] Commenters also expressed the view that hedge funds and other professional traders would leverage daily repurchase information to exploit arbitrage opportunities [86] and actually increase information asymmetry.[87] Some commenters asserted that we have failed to identify a ''market failure'' that would justify additional disclosures and expressed the view that information asymmetry is advantageous to markets because it incentivizes some market actors to expend resources developing information that would be relevant to an issuer's share price.[88]

Several commenters asserted that the proposed daily repurchase disclosures on Form SR may encourage issuers to act inefficiently to mitigate the negative consequences of daily disclosure.[89] Commenters suggested that issuers may shift from more conservative daily dollar cost averaging strategies to the more costly practice of effecting larger repurchases on fewer days to avoid triggering speculation, continue daily repurchases when it does not make financial sense to do so, or limit their average daily trading volume to try to ensure that sophisticated investors viewed the daily trades as immaterial, even if a larger volume would be more beneficial to shareholders.[90] One commenter suggested that share repurchase disclosures are unnecessary because, even if managers benefit from repurchases through an increased share price, such an increase also benefits other existing shareholders.[91]

Some commenters asserted that share repurchase information is not meaningful to investors because investors have never asked for detailed share repurchase information.[92] One commenter stated that the proposed amendments would interfere with a corporation's state law duties by discouraging and deterring companies from undertaking repurchases that they otherwise judge to be in shareholders' interest.[93] Another commenter asserted that the proposed amendments would violate the First Amendment because the proposed amendments ''do[ ] not acknowledge the compelled-speech burdens that come with a next-day reporting regime.'' [94]

A number of commenters disputed the proposal's assertion that the use of share repurchases may help some insiders achieve performance targets.[95] Several of these commenters [96] cited the 2020 Staff Study [97] for support, particularly the study's statement that ''82% of the firms reviewed either did not have EPS-linked compensation targets or had EPS targets but their board considered the impact of repurchases when determining whether performance targets were met or in setting the targets.'' [98] On the other hand, one commenter [99] asserted that the proposal did not go far enough to address executive compensation concerns and urged that the Commission revise Instruction 7 to 17 CFR 229.402(d) (''Item 402(d) of Regulation S–K'') to require issuers to

[77] *See* letters from Chamber II, NAM, and T. Rowe Price.

[78] *See, e.g.,* letters from Armstrong, BPI & Amer. Bankers Assoc., Business Roundtable, Cato, Chamber II, Coalition, Davis Polk, DLA Piper, Dow, Guzman, Maryland Bar, Profs. Lewis and White, Quest, SCG, T. Rowe Price, and Vistra. For example, commenters claimed that daily disclosure could boost share price, resulting in higher repurchase costs; push issuers to revise or abandon share repurchase plans; cause issuers to substitute ASRs for daily repurchases, which would increase costs and limit flexibility; discourage stock-based compensation; deter potential capital allocation decisions; burden personnel; and incentivize the use of larger financial firms over smaller ones. *See, e.g.,* letters from Coalition, Davis Polk, DLA Piper, Guzman, Maryland Bar, Profs. Lewis and White, Quest, SCG, T. Rowe Price, and Vistra.

[79] *See, e.g.,* letters from Business Roundtable, Davis Polk, Dow, FedEx, Home Depot, Kaswell, Profs. Lewis and White, NAM, PNC, Quest, Shearman, SIFMA II, Simpson Thacher, T. Rowe Price, Wilson Sonsini, and Vistra. For example, some of the commenters noted that a benign halt in purchases could be misinterpreted as a signal that the issuer has material nonpublic information or that the issuer has lost confidence in the value of its stock. *See, e.g.,* letters from Business Roundtable, Davis Polk, Dow, Home Depot, NAM, Profs. Lewis and White, Quest, SCG, Simpson Thacher, T. Rowe Price, and Vistra. One commenter noted that misinterpretation risks are heightened for financial services companies because a halt in their share repurchases could be due to supervisory action by the Federal Reserve or other regulators, but the issuer may be barred from disclosing such action. *See* letter from PNC.

[80] *See, e.g.,* letters from Cravath, Davis Polk, Profs. Lewis and White, and SCG.

[81] *See, e.g.,* letters from Davis Polk, PNC, SIFMA II, and Sullivan.

[82] *See* letters from Home Depot and PNC.

[83] *See* letters from Cravath and Davis Polk.

[84] *See, e.g.,* letters from Dow, Kirkland Ellis, NYSE, SCG, and Vistra.

[85] *See, e.g.,* letters from ACLI, Armstrong, ASA, Chevron, Cravath, Dow, Guzman, Hecht, Home Depot, Jones Day, NYSE, PNC, Profs. Lewis and White, Quest, SCG, Shearman, SIFMA II, and Simpson Thacher.

[86] *See, e.g.,* letters from ACCO, Armstrong, ASA, BPI & Amer. Bankers Assoc., Business Roundtable, Cato, Chevron, Coalition, Cravath, Davis Polk, DLA Piper, Dow, Empire, FedEx, Guzman, Home Depot, HP, IBC, Jones Day, NAM, NYC Bar, Norfolk Southern, PA Chamber, Paul Weiss, PNC, Profs. Lewis and White, Quest, Shearman, SIFMA II, SCG, Simpson Thacher, Stephens, Sullivan, T. Rowe Price, Vistra, and Wilson Sonsini. One commenter noted that sophisticated investors already use their superior technology and resources, which are not available to ordinary investors, to identify trading opportunities and earn positive returns by processing the high-frequency information available on Form 4. *See* letter from Profs. Lewis and White.

[87] *See, e.g.,* letters from NYSE and Profs. Lewis and White.

[88] *See, e.g.,* letters from Chamber II and Profs. Lewis and White.

[89] *See, e.g.,* letters from Chevron, Davis Polk, DLA Piper, Profs. Lewis and White, SIFMA II, and Sullivan.

[90] *See, e.g.,* letters from ACCO, Armstrong, ASA, BPI & Amer. Bankers Assoc., Business Roundtable, Cato, Chevron, Coalition, Cravath, Davis Polk, DLA Piper, Dow, Empire, FedEx, Guzman, Home Depot, HP, IBC, Jones Day, NAM, NYC Bar, Norfolk Southern, PA Chamber, Paul Weiss, PNC, Quest, Shearman, SIFMA II, SCG, Simpson Thacher, Stephens, Sullivan, T. Rowe Price, Vistra, and Wilson Sonsini.

[91] *See* letter from Maryland Bar.

[92] *See, e.g.,* letters from ACCO and Norfolk Southern. *See also* letter from Profs. Lewis and White (stating that daily repurchase data is generally immaterial to investors and that many issuers already disclose completion or cancellation of open market repurchase programs if they believe it is material).

[93] *See* letter from Cato.

[94] *See* letter from Chamber III.

[95] *See, e.g.,* letters from Bishop, Cato, Chamber II, Coalition, Maryland Bar, PA Chamber, Pay Governance, Profs. Lewis and White, SCG, T. Rowe Price, Virtu, and Vistra. *But see* letter from Kaswell (stating that the proposal does not go far enough to address executive compensation concerns and urged that issuers be required to disclose whether their repurchase plans triggered additional compensation). Additionally, commenters stated that the proposal does not reflect the reality that many compensation plans adjust for repurchases management could not use share repurchases to inflate earnings because doing so would be thwarted by an issuer's compensation committee and/or its investors. *See, e.g.,* letters from Chamber II and Profs. Lewis and White.

[96] *See, e.g.,* letters from Bishop, Cato, Chamber II, Coalition, Profs. Lewis and White, T. Rowe Price, Virtu, and Vistra.

[97] *See* 2020 Staff Study, *supra* note 27. *See also infra* note 383 and accompanying text.

[98] *Id.* at 42. Another commenter cited its own study showing that total shareholder return and capital expenditure growth are higher for companies with larger buybacks than for companies with smaller buybacks and concluded that EPS-based incentive plans do not encourage short-term gains at the expense of long-term performance. *See* letter from Pay Governance.

[99] *See* letter from Kaswell.

disclose whether their repurchase plans triggered additional compensation.

One commenter asserted that the amendments are contrary to the Commission's prior statement to ''minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer.'' [100] Several commenters asked the Commission to adopt alternative methods and deadlines for issuers to provide share repurchase disclosures. Some of these commenters suggested that issuers should make their share repurchase disclosures on Form 8–K if the repurchases exceed specified volume thresholds,[101] such as one [102] or two [103] percent of the issuer's total outstanding shares, or some other threshold.[104] Other commenters suggested extending the Form SR filing deadline to two days,[105] ten days,[106] or one month after the trade,[107] or one day after settlement.[108] A number of commenters recommended scaling back the proposal by changing the deadline for the share repurchase disclosure and the period that the disclosure would encompass.[109] Commenters suggested the following deadlines and periods:

- Quarterly reporting of daily data; [110]
- Quarterly or monthly reporting of daily data; [111]
- Quarterly reporting of biweekly data or limited daily information; [112]
- Monthly reporting of daily data; [113]
- Monthly reporting of biweekly data; [114]
- Monthly reporting of monthly data; [115] and
- Weekly reporting of weekly data.[116]

Moreover, one commenter supported the proposal to allow Form SR to be furnished to the Commission instead of filed, stating that ''inadvertently submitting incorrect data'' on the form should not ''automatically open the door'' to private litigation, particularly section 11 claims,[117] and another commenter suggested that the final amendments include a safe harbor permitting issuers to correct Form SR errors without liability within four business days of the end of the calendar month in which corrections are identified.[118] Some commenters asked the Commission to provide more specificity around the materiality standard governing amendments to Form SR, and recommended either a three or five percent misstatement threshold.[119] One commenter disagreed with any materiality threshold, stating that such a threshold would be more confusing than beneficial.[120]

b. Comments on Exemptions for Certain Issuers

Several commenters discussed whether the Commission should exempt certain categories of issuers from the amendments.[121] Commenters were split between their support for,[122] and opposition to,[123] exempting FPIs from the proposed quantitative daily disclosure requirements. The commenters that supported an exemption were generally concerned that requiring FPIs to file Form SR would deviate from the Commission's historic practice of deferring to an FPI's home country disclosure requirements, and some claimed that applying the proposed amendments to FPIs would subject them to multiple, differing disclosure regimes.[124]

One commenter asserted that applying the amendments to FPIs would discourage foreign companies from listing on U.S. exchanges.[125] Other commenters requested that the Commission clarify that the final amendments would not apply to Multijurisdictional Disclosure System (''MJDS'') filers.[126] Some commenters recommended that, at a minimum, FPIs that are required to provide share repurchase information in their home country disclosures, and include that information in their filings on Form 6–K, should be exempt from the proposed quantitative daily disclosure amendments.[127] Some of these commenters indicated that FPIs should not be required to disclose the total number of shares repurchased in their home countries in reliance on the safe harbor in Rule 10b–18 nor the total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) because that information is not likely to provide any meaningful information to U.S. investors.[128]

Most commenters that discussed the issue asserted that the final amendments should not provide an exemption to smaller issuers.[129] Nonetheless, one of these commenters recommended that, if the Commission adopts a next-day reporting requirement, it should provide smaller reporting companies

[100] *See* letter from Chamber II (quoting 2003 Adopting Release, *supra* note 5, at 64953).

[101] *See, e.g.,* letters from ABA Committee, DLA Piper, Maryland Bar, NYC Bar, NYSE, and Sullivan.

[102] *See, e.g.,* letters from ABA Committee, DLA Piper, NYSE, Maryland Bar, and Sullivan.

[103] *See* letter from Simpson Thacher.

[104] *See* letter from FedEx (suggesting that the amendments replace the share repurchase disclosure on proposed Form SR with disclosure on Form 8–K, but did not specify the trigger at which the Form 8–K would be required).

[105] *See, e.g.,* letters from CII and Philip Forbini (Jan. 11, 2023).

[106] *See* letter from Jones Day.

[107] *See id.*

[108] *See* letter from NASAA.

[109] *See, e.g.,* letters from Anthem Advisors LLC (Dec. 19, 2022) (''Anthem Advisors''); Armstrong; BrilLiquid; Chamber II; Cravath; DLA Piper; Guzman; Hecht; Home Depot; HP; Jones Day; Charles Morris, Greenhouse Funds LLP (Dec. 16, 2021) (''Morris''); NAM; Pentacoff; Quest; SCG; SIFMA II; Simpson Thacher; and Stephens. Additionally, one commenter stated that, if the final amendments include Listed Closed-End Funds, those funds should only be required to provide daily information semi-annually in their Form N–CSR. *See* letter from Investment Company Institute (Apr. 1, 2022) (''ICI I'').

[110] *See* letter from Jones Day (stating that the amendments could achieve the same goals through quarterly disclosure of daily data).

[111] *See* letter from Anthem Advisors (stating that requiring daily disclosures in a single monthly or quarterly report listing all transactions during the preceding period would be preferable because it would more easily accessed in EDGAR and more easily understood).

[112] *See* letter from Home Depot (recommending, as an alternative, supplementing current Item 703 disclosure with a list of dates on which repurchases were made, without the daily volume).

[113] *See* letter from Cravath (stating that monthly disclosure of daily data would strike a better balance between the benefits of the information and the negatives of abuse, noise, and the need to correct failed trades).

[114] *See* letter from Home Depot (offering this frequency and period as an alternative to its prior recommendation of quarterly reporting of biweekly data).

[115] *See, e.g.,* letters from Armstrong, Chamber II, DLA Piper, Guzman, HP, Morris, NAM, Quest, SCG, SIFMA II, Simpson Thacher, and Stephens.

[116] *See, e.g.,* letters from BrilLiquid, Guzman, Hecht, and Pentacoff.

[117] *See* letter from NASAA.

[118] *See* letter from Cravath.

[119] *See, e.g.,* letters from Hecht and NASAA.

[120] *See* letter from ICGN.

[121] *See, e.g.,* letters from ABA Committee, ACCO, Alternative & Direct Investment Securities Association (Mar. 31, 2022) (''ADISA''), Better Markets I, BPI & Amer. Bankers Assoc., BrilLiquid, Canadian Bankers Association (Mar. 31, 2022) (''CBA''), CFA Institute, CII, Cravath, Hecht, IBC, ICGN, ICI I, Nareit (Mar. 31, 2022) (''Nareit''), NYC Bar, NYSE, Profs. Lewis and White, Roosevelt, SIFMA II, Sullivan, Teachers Insurance and Annuity Association of America (Apr. 1, 2022) (''TIAA''), TotalEnergies SE (Apr. 1, 2022) (''TotalEnergies''), and Vereniging Effecten Uitgevende Ondernemingen (Mar. 30, 2022) (''VEUO''). Additionally, one commenter recommended exempting from the amendments repurchases of an issuer's preferred stock. *See* letter from Vicki Owen (Jan. 19, 2023).

[122] *See, e.g.,* letters from ABA Committee, CBA, Cravath, NYC Bar, NYSE, SIFMA II, Sullivan, TotalEnergies, and VEUO.

[123] *See, e.g.,* letters from Better Markets I, BrilLiquid, CFA Institute, CII, Hecht, ICGN, and Roosevelt.

[124] *See, e.g.,* letters from SIFMA II, TotalEnergies, and VEUO.

[125] *See* letter from NYC Bar.

[126] *See, e.g.,* letters from ABA Committee, BCE Inc. (Mar. 30, 2022), CBA, Jones Day, and Sullivan.

[127] *See, e.g.,* letters from SIFMA II, Sullivan, and VEUO.

[128] *See, e.g.,* letters from SIFMA II and VEUO.

[129] *See, e.g.,* letters from ABA Committee, Better Markets I, BrilLiquid, CFA Institute, Cravath, ICGN, and Hecht.

(''SRCs'') [130] with additional time to furnish their Form SR.[131] Another commenter suggested that smaller companies should have simplified reporting requirements, such that they not be required to provide their Form SR as frequently as other issuers.[132] One commenter recommended that SRCs' repurchase reporting threshold be based on a five percent volume trigger.[133] Other commenters, however, asserted that applying the amendments to smaller issuers would be onerous and unnecessary [134] and would place an increased burden [135] on those issuers.

Additionally, one commenter recommended exempting issuers without an established market for their securities because, in its view, investors receive little informational value from this disclosure and there is minimal risk of opportunistic repurchases in such cases.[136] Another commenter recommended exempting publicly traded government contractor companies.[137] A few commenters suggested exempting regulated banking institutions from the proposed amendments because those issuers are already required to disclose their regulatory capital requirements and capital planning process, so the repurchase information in the proposed amendments would not be necessary for investors.[138] One of these commenters acknowledged that the information required by banking regulators ''does not directly align with the share-repurchase-specific disclosure the SEC is proposing to require,'' though the commenter also asserted that such information ''nevertheless provides investors with insights into firms' capital planning processes and actions.'' [139]

Some commenters asserted that Listed Closed-End Funds [140] should be exempt from the proposed quantitative daily disclosure amendments because, given the way the funds are structured, they believe that the concerns motivating the proposal are absent. Other commenters disagreed and asserted that Listed Closed-End Funds should be subject to the final rule.[141] In response to a request for comment about whether to exempt, among other issuers, Listed Closed-End Funds from the structured data requirement, one commenter suggested that there is a link between having a lower public float and the likelihood of market manipulation.[142] Another commenter stated that many Listed Closed-End Funds repurchase shares when the market price is below net asset value (''NAV'') and/or to increase NAV for remaining shareholders, and that given the close relationship between share purchases and NAV, it is arguably more important for Listed Closed-End Funds to disclose information regarding their planned and actual repurchase activity.[143] Other commenters indicated that the proposed amendments should exempt trades associated with Rule 10b5–1 plans [144] and purchases made in reliance on the Rule 10b–18 safe harbor.[145]

c. Comments on Repurchases Intended To Satisfy Rule 10b5–1(c) and Intended To Qualify for the Rule 10b–18 Safe Harbor

Some commenters generally supported the requirements to disclose whether repurchases were made pursuant to a Rule 10b5–1(c) plan, as proposed.[146] One commenter recommended requiring additional disclosure regarding an issuer's Rule 10b5–1(c) plan, including information on adoption, modification, suspension, or termination of the plan; the maximum number of shares planned for sale under the plan; and any suspensions or terminations of a planned repurchase pursuant to such a plan.[147] Some commenters supported the proposed disclosures related to the Rule 10b–18 safe harbor, but recommended that the Commission go farther by repealing Rule 10b–18 and replacing it with bright-line limits.[148] Another commenter generally supported the proposed Rules 10b5–1(c) and 10b–18 disclosures, but indicated that they should not be applied to FPIs.[149]

Other commenters opposed generally the requirements to disclose repurchases intended to satisfy Rule 10b5–1(c) and intended to qualify for the Rule 10b–18 safe harbor.[150] One commenter disagreed specifically with proposed Item 703(c)(2)(iii) and (c)(3)(v), which would require disclosure of the terminations of Rule 10b5–1 trading plans, or determinations not to make further purchases under a plan, because that could lead to unfounded speculation about mergers and acquisitions or other activities.[151] Another commenter asserted that requiring disclosure as to whether share repurchases were made in reliance on the Rule 10b–18 safe harbor could cause a negative inference against any issuer not relying on the safe harbor.[152]

d. Comments Concerning Requests for Clarification

Some commenters asked the Commission to clarify certain aspects of the proposed quantitative daily disclosures on Form SR.[153] One of these commenters asked the Commission to provide a more precise definition of ''share repurchase program'' because the term is not currently ''a legal term of

[130] ''Smaller reporting company'' is defined in Securities Act Rule 405 and 17 CFR 240.12b–2 as an issuer that is not an investment company, an asset-backed issuer (as defined in 17 CFR 229.1101), or a majority-owned subsidiary of a parent that is not an SRC and that: (1) Had a public float of less than $250 million; or (2) had annual revenues of less than $100 million and either: (a) no public float; or (b) a public float of less than $700 million.

[131] *See* letter from Cravath.

[132] *See* letter from Hecht.

[133] *See* letter from ABA Committee (explaining that ''[s]etting the Form 8–K threshold at 5% of the total shares outstanding would be consistent with how SRCs are treated with respect to disclosures under current Item 3.02 for dilutive issuances in private transactions,'' and that ''this accommodation would not result in a meaningful loss of information to investors'').

[134] *See* letter from ACCO.

[135] *See* letter from Profs. Lewis and White.

[136] *See* letter from Publix Super Markets, Inc. (Jan. 10, 2023) (''Publix''). The commenter also notes that the Inflation Reduction Act exempts such companies from the excise tax and, therefore, asserts that a similar exemption should apply here.

[137] *See* letter from PSC. The commenter stated that that the proposed daily reporting requirements would increase costs and offer no identifiable benefit to publicly traded government contractor companies because those firms are able to do business only with the government, so their costs must be covered by their government customers. As a result, adding the daily disclosure requirements to these firms would make them less competitive and force them out of the public markets.

[138] *See, e.g.,* letters from BPI & Amer. Bankers Assoc. and IBC.

[139] *See* letter from BPI & Amer. Bankers Assoc.

[140] *See, e.g.,* letters from ICI I and TIAA (suggesting that, because executive compensation is generally not tied to share price among closed-end funds, these issuers generally have little or no incentive to misuse share repurchases). *See also* letter from Investment Company Institute (Jan. 11, 2023) (asserting that, because the Inflation Reduction Act exempted Listed Closed-End Funds, the final amendments should do so too). Some commenters suggested that the Commission should also exempt ''non-listed funds'' from the proposed amendments. *See* letters from ADISA and IPA. Both the proposed and final amendments, however, would only apply to Listed Closed-End Funds.

[141] *See* letters from CFA Institute, XBRL US (Mar. 31, 2022) (''XBRL US''), BrilLiquid, Hecht, and ICGN.

[142] See letter from XBRL US.

[143] See letter from CFA Institute.

[144] *See* letter from PNC.

[145] *See, e.g.,* letters from HP and SCG.

[146] *See, e.g.,* letters from CFA Institute, CII, and SIFMA II.

[147] *See* letter from CFA Institute.

[148] *See, e.g.,* letters from AFREF *et al.;* CFA Institute; CII; Oxfam; Prof. Palladino; and William Lazonick & Ken Jacobson, Academic-Industry Research Network (Apr. 1, 2022) (''Lazonick & Jacobson'').

[149] *See* letter from SIFMA II.

[150] *See, e.g.,* letters from Cravath, Dow, Maryland Bar, and Sullivan.

[151] *See* letter from Sullivan.

[152] *See* letter from Maryland Bar.

[153] *See, e.g.,* letters from Chamber II, Bishop, Cravath, DLA Piper, FedEx, HudsonWest LLC (Mar. 31, 2022) (''HudsonWest''), Simpson Thacher, Thomas Nash (Oct. 12, 2022) (''Nash''), and Wilson Sonsini.

art,'' so different issuers may use the term differently.[154] Other commenters claimed that the proposed amendments were ambiguous as to when a transaction would be considered ''executed,'' particularly in the context of ASRs.[155] One commenter recommended that the Commission define the terms, ''business day'' and ''before the end,'' used in the proposed amendments establishing the Form SR deadline.[156] Another commenter requested that the final amendments clarify whether withhold-to-cover shares would be encompassed by the rule and recommended that they not be included under any final rule.[157] Some commenters claimed that an end of next business day deadline would prejudice issuers on the west coast,[158] with one of the commenters pointing out that ''those making filings on Form 4 [159] are provided not only with two business days to report insider transactions that are significantly less frequent than those which would be reported under Form SR, but such filers are given until 10 p.m. Eastern Time to file.'' [160]

e. Other Comments

A number of commenters asked the Commission to adopt additional Form SR disclosure requirements that the Commission did not propose, including the number of shares outstanding following the reported transaction,[161] the number of shares remaining to be purchased pursuant to the current repurchase plan,[162] and the highest and lowest price paid per share.[163] A form letter submitted by many commenters recommended replacing the Rule 10b–18 safe harbor with a bright-line rule and making stock repurchases beyond the bright-line rule unlawful.[164] The commenters also suggested a prohibition on trading by insiders during repurchase announcements and executions of repurchase trades within at least ten days of these events.

A few commenters suggested alternatives for the proposed Form SR disclosures, such as requiring the information to be disclosed as part of Item 703 of Regulation S–K,[165] or providing interpretive guidance to elicit the disclosure instead of revising the Commission's rules.[166] Some commenters recommended that, instead of the proposed quantitative daily share repurchase disclosures, the Commission should require disclosure about the effect of share repurchases on executive compensation reported under 17 CFR 229.402 (Item 402 of Regulation S–K).[167] One commenter asserted that the effect of share repurchases on executive compensation pertains to an issuer's corporate governance and should be resolved by shareholders instead of the Commission.[168]

With respect to the proposed requirement that Form SR disclose the total number of shares purchased in reliance on Rule 10b–18, some commenters suggested that issuers should only be required to disclose whether a purchase ''was intended to comply'' with that safe harbor due to interpretive legal questions and the speed at which market quotations of stock prices can change.[169] Some commenters asked the Commission to include a phase-in period of nine to 12 months for any final amendments that the Commission may adopt.[170]

3. Final Amendments

We continue to believe that disclosure of issuers' total repurchases made each day would benefit investors and markets. The final amendments require the same additional detail regarding an issuer's daily repurchase activity, as proposed. Moreover, to make this information readily available for analysis, the final amendments require that the share repurchase information that is disclosed be reported using Inline XBRL, also as proposed.

However, although the final amendments require daily repurchase disclosure, as proposed, the final amendments require a different deadline and manner of disclosure. In response to commenters' objections, the final amendments do not require issuers to provide their daily repurchase disclosure one business day after execution of their share repurchase order.[171] Rather, in a change from the proposal, the final amendments require:

- Corporate issuers that file on domestic forms to disclose the total repurchases made each day for the quarter in an exhibit to their Form 10–Q and Form 10–K (for their fourth fiscal quarter);
- Listed Closed-End Funds to disclose daily quantitative repurchase data in their semi-annual and annual reports on Form N–CSR; and
- FPIs reporting on the FPI forms to disclose daily quantitative repurchase data at the end of every quarter in new Form F–SR,[172] which will be due 45 days after the end of each of the issuer's fiscal quarters.[173]

After considering the comments, we believe that providing the same detail as was proposed but on a less frequent basis would avoid many of the costs that commenters noted while still providing important disclosures that address the informational deficiencies in current reporting that we have identified. Accordingly, the final amendments require issuers to disclose their daily quantitative share repurchase information periodically in quarterly or semi-annual reports (''periodic reporting'') instead of requiring issuers to disclose it on a daily basis, as proposed.

Although periodic reporting of daily quantitative data will provide less frequent repurchase disclosures to investors than would daily reporting of that data, periodic reporting will still provide investors with most of the benefits that daily reporting would offer, but at a lower cost to issuers. In fact, the costs to issuers may be only incremental because issuers are already reporting share repurchases by month in their

[154] *See* letter from Cravath. The commenter suggested that share repurchase program be defined as ''cash purchases by issuers in the market for their own account and not for the purpose of immediately delivering those shares to a third party in satisfaction of a pre-existing obligation.'' Further, the commenter provided certain items that should fall outside the definition, including: (1) arrangements to acquire shares in the market to deliver to shareholders participating in dividend reinvestment plans, to employees participating in employee share purchase programs, or to 401(k) or other retirement accounts in satisfaction of ''stock match'' commitments; (2) arrangements to facilitate the operation of employee equity incentive plans; (3) self-tender offers; (4) net share settlement and other transactions where a holder forfeits an entitlement to an issuer's shares (*e.g.,* in connection with an option, or upon separation); and (5) cash settlement of transactions that reference an issuer's shares, such as derivative transactions.

[155] *See, e.g.,* letters from Chamber II, Cravath, DLA Piper, FedEx, HudsonWest, Simpson Thacher, and Wilson Sonsini.

[156] *See* letter from Bishop.

[157] *See* letter from Nash.

[158] *See, e.g.,* letters from Chevron and HP.

[159] 17 CFR 249.104.

[160] *See* letter from HP.

[161] *See, e.g.,* letters from AFREF *et al.* and Pentacoff.

[162] *See* letter from CFA Institute.

[163] *See* letter from AFREF *et al.*

[164] *See* letter from Form Letter A.

[165] *See* letter from SIFMA II.

[166] *See* letter from Profs. Lewis and White.

[167] *See, e.g.,* letters from Maryland Bar and Profs. Lewis and White.

[168] *See* letter from PA Chamber.

[169] *See, e.g.,* letters from SIFMA II and Sullivan.

[170] *See, e.g.,* SIFMA II, Sullivan, and Wilson Sonsini.

[171] As discussed above, *see supra* Section III.A.2.d., a number of commenters requested that we clarify certain aspects of the proposed amendments. *See, e.g.,* letters from Chamber II, Bishop, Cravath, DLA Piper, FedEx, HudsonWest, Nash, Simpson Thacher, and Wilson Sonsini. As a result of the changes from the proposed amendments to the final amendments, most of these requests are no longer applicable. Those clarification requests still applicable for the final amendments are addressed in the appropriate places in this release.

[172] *See supra* note 24.

[173] The final amendments adopt new Rule 13a–21, as proposed, which requires applicable FPIs to file a Form F–SR.

periodic reports. Investors will be able to use the granular daily quantitative data to evaluate an issuer's repurchases in more detail, including in the context of other point-in-time disclosures, such as executive compensation and financial statement disclosures.

While this periodic reporting will, in most cases, result in daily quantitative repurchase data that are available to investors later than was proposed, investors may well find the disclosure more meaningful when considered as part of the overall pattern of the issuer's repurchases, because they will be able to evaluate the efficiency of the share repurchases based on when the issuer repurchased its shares and the issuer's stated reasons for doing so. Moreover, this periodic, rather than daily, reporting should mitigate any concerns raised by commenters about the potential misinterpretation of an issuer's day-to-day changes in trading activity [174] that could cause unjustified stock price volatility [175] or disrupt confidential merger or acquisition discussions.[176] Additionally, while some commenters expressed concern that investors might use daily quantitative disclosure data to gain insight into or identify the issuer's trading strategies,[177] as other commenters observed, the move to periodic reporting should substantially mitigate any such concern.[178]

We acknowledge, as a commenter observed, that periodic reporting will provide information to the market more slowly than the two-business day maximum delay associated with insider reporting of changes in beneficial ownership on Form 4.[179] While both issuer and insider trades may reflect managers' views of an issuer's value, we recognize that the much greater frequency of issuer trades pursuant to repurchase plans relative to trades by individual insiders likely would result in considerably more frequent reporting by issuers, and thus in greater costs than those incurred by insiders reporting their transactions on Form 4. In addition, because of this greater frequency of trading, there would be a greater risk (as compared to insider transactions) that daily reporting would allow other market participants to trade strategically in response to issuer disclosures and greater potential harm to investors as a result. Further, we believe that even with periodic reporting investors will still be able to use periodic reporting of daily repurchases to identify potentially opportunistic behavior, and that issuers will take into account that likelihood when determining their trading behavior.

The final amendments require daily share repurchase disclosure on a quarterly basis in Forms 10–Q and 10–K (for the issuer's fourth fiscal quarter) for corporate issuers reporting on domestic forms and on a semi-annual basis in Form N–CSR for Listed Closed-End Funds. Quantitative share repurchase disclosures, aggregated on a monthly basis, are already required in those forms.[180] The final amendments require the disclosure of additional detail with respect to the already-reported share repurchases. Therefore, investors should be familiar with looking to these filings for repurchase information. Moreover, this change should lessen the burden for issuers compared with the proposal because they are accustomed to providing repurchase information in these periodic filings. As one commenter noted, it would be useful for the issuer's transactions to be disclosed in periodic reports for ''the ease of use and access to information for those who access EDGAR using the SEC website.'' [181]

Listed Closed-End Funds will be required to provide their daily share repurchase disclosures on Form N–CSR on a semi-annual basis. Like Forms 10–Q and 10–K, Form N–CSR currently requires the disclosure of quantitative share repurchase disclosures on a semi-annual basis so investors should likewise be familiar with looking in this filing for repurchase information. We are subjecting Listed Closed-End Funds to the final amendments because, although not all of the motivations for corporate issuer share repurchases apply to them due to differences in the business model and organizational structure of a fund as compared to a corporate issuer, investors in Listed Closed-End Funds also will benefit from the opportunity to evaluate the purposes, impacts, and efficiency of share repurchases and to understand the impact of such activity on the value of their investments. As one commenter observed in opposing an exemption for Listed Closed-End Funds, this interest may be particularly strong given the close relationship between share repurchases and NAV, which the commenter believed made it arguably more important for Listed Closed-End Funds to disclose quantitative and qualitative information regarding planned and actual repurchases.[182] Relatedly, absent the additional information required by the final amendments—including daily quantitative repurchase data—it would be difficult for investors in Listed Closed-End Funds to distinguish between price movements that are attributable to repurchase activity as opposed to other market activity impacting share price.[183] Further, as noted by another commenter, disclosure may be of particular importance for issuers with lower floats, such as Listed Closed-End Funds, because such issuers may face a greater likelihood that repurchases will have a significant effect on share price.[184]

The final amendments will require FPIs that report using the FPI forms to provide disclosure of daily repurchase data on new Form F–SR, which is to be filed with the Commission quarterly. The Form F–SR will be due 45 days after the end of the FPI's fiscal quarter to be consistent with the latest deadline for a quarterly report on Form 10–Q.[185] FPIs that report on the FPI forms do not have a quarterly reporting obligation under the Exchange Act and generally provide repurchase disclosure only in their annual report on Form 20–F. Our reasons for adopting quarterly reporting of daily repurchases for FPIs reporting on the FPI forms are the same as for corporate issuers reporting on domestic forms.[186] In addition, similar to the

[174] *See, e.g.,* letters from Business Roundtable, Davis Polk, Dow, FedEx, Home Depot, Kaswell, Profs. Lewis and White, NAM, PNC, Quest, Shearman, SIFMA II, Simpson Thacher, T. Rowe Price, Wilson Sonsini, and Vistra.

[175] *See, e.g.,* letters from Cravath, Davis Polk, Profs. Lewis and White, and SCG.

[176] *See, e.g.,* letters from Davis Polk, PNC, SIFMA II, and Sullivan.

[177] *See, e.g.,* letters from Home Depot and PNC.

[178] *See, e.g.,* letters from Cravath and Davis Polk.

[179] *See* letter from Roosevelt (asserting that the Commission should adopt daily reporting ''for similar reasons that Form 4 requires daily disclosure'').

[180] Due to the new daily quantitative repurchase disclosure requirements, we are eliminating the current requirement to provide quantitative share repurchase disclosures on a monthly basis because it would be redundant. *See infra* note 218 and accompanying text.

[181] *See* letter from Anthem Advisors.

[182] *See* Letter from CFA Institute.

[183] *See* Proposing Release, *supra* note 2, at 8460–8461.

[184] *See* letter from XBRL US.

[185] We are requiring a deadline for the Form F–SR of 45 days after the end of the fiscal quarter for all four quarters, including the final quarter of the fiscal year. While domestic corporate filers receive additional time to file a Form 10–K following the final quarter of their fiscal year, relative to the time for other quarterly filings, this extended period is due to the additional materials that must be included in the Form 10–K. Since no such difference would exist for the fourth-quarter Form F–SR, we are requiring a uniform filing deadline after each quarter.

[186] *See* letter from CII (stating that issuers that file on domestic forms and FPIs that file on the FPI forms should be subject to the same filing obligations). In addition, because FPIs are more similar to corporate issuers filing on domestic forms than Listed Closed-End Funds, we are keeping the

Continued

amendments we are adopting to our domestic forms, we are eliminating the requirement in Form 20–F to provide quantitative share repurchase disclosures on a monthly basis.[187]

When it adopted the Item 703 disclosure requirements in 2003, the Commission stated that it expected the Item 703 disclosures to provide investors and the marketplace with important information regarding an issuer's repurchase activity that would allow them to assess the impact of an issuer's share repurchases on the issuer's stock price, similar to periodic disclosure of issuer earnings and dividend payouts.[188] Disclosure of a monthly aggregation of repurchases, however, does not always allow investors to assess whether, for example, the bulk of an issuer's repurchases were made in advance of a specific date, such as the date on which incentive targets for compensatory awards are measured or the day material nonpublic information is released to the public.

The Commission proposed additional share repurchase disclosures to provide investors with further insight into the details of an issuer's share repurchases, which when combined with other information available about the issuer, could diminish informational asymmetry, enhance transparency, and enable investors to undertake a more thorough assessment of issuer share repurchases.[189] Investors could use this more detailed disclosure to monitor and evaluate issuer share repurchases and their effects on the market for the issuer's securities.

In some circumstances, such as when repurchases may affect the value of compensatory awards to executives or the amount for which executives can sell such awards, issuers may have incentives to engage in share repurchases for reasons other than to increase or signal the issuer's fundamental value. In addition, issuers are repurchasing their own securities, so they will typically have significantly more, as well as more detailed, information about the issuer and its future prospects. Thus, as we have described above, investors will benefit from having additional disclosures that will enable them to evaluate the efficiency of share repurchases or determine a pattern of when repurchases could be timed to affect compensation or to benefit from material nonpublic information, among other possible uses of daily repurchase data, thereby increasing investor confidence.

We disagree with commenters who asserted that we have not identified a ''market failure'' that would justify the additional disclosures.[190] In particular, these commenters asserted that there is no market failure because information asymmetry is advantageous to markets in that it incentivizes some market actors to expend resources developing information that would be relevant to an issuer's share price.[191] We disagree with these arguments. As the sources cited by the commenters themselves point out, informational asymmetries are not necessary to incentivize the production of information.[192] In the case of repurchases, relevant information about stock repurchases is often nonpublic, and thus not typically discoverable by third parties, including investors, who would benefit from the additional information conveyed by daily repurchase disclosures. We discuss in more detail the market failures addressed by the amendments in the Economic Analysis section, below.[193]

One commenter also asserted that no amendments were necessary because investors can already glean all necessary information from existing filings, such as through quarterly filings, mandatory disclosures of material new repurchase plans, or potential voluntary disclosures of data issuers deem material to investors.[194] For example, the commenter noted that investors can likely infer instances when repurchases have helped an issuer hit an EPS target because quarterly filings will reveal aggregate repurchases over the quarter as well as earnings.[195]

While we agree these kinds of informed conclusions based on existing quarterly data are possible, existing disclosures are inadequate to provide investors with the information needed to fully understand the actual impact of a repurchase. Data on daily purchases are more informative, and so will enable more accurate assessments of the motives for repurchases. For example, repurchases conducted in the days immediately before the end of a fiscal quarter, at a time when the issuer's managers are very likely to know that the issuer will miss an EPS target, would suggest that the repurchase likely does not fully signal the issuer's fundamental value, in a way that would not be the case if such repurchases were conducted in an equal amount each day of the quarter. Monthly aggregates also are unlikely to consistently reveal whether repurchases occurred before or after award grants or trades by executives, which could similarly signal that the repurchase was, in part, motivated by purposes other than shareholder value.[196]

One commenter suggested that the amendments are not needed when the issuer's trades would qualify for a safe harbor provision of Rule 10b5–1.[197] Instead, we think that the concerns that justify disclosure apply fully in that setting. An issuer's use of a Rule 10b5–1 trading plan would not, for example, affect executives' ability to time trades

disclosure frequency consistent with such corporate issuers. Similarly, we do not believe that semi-annual reporting of daily repurchase information would be appropriate for FPIs that do not file on domestic forms for the same reasons. Therefore, we believe that corporate issuers that file on domestic forms and FPIs that file on the FPI forms should be subject to the same filing obligations.

[187] Form F–SR contains an instruction stating that the information reported on the form relates to the issuer's securities in ordinary share form, whether the issuer has repurchased the shares itself or depositary receipts that represent the shares.

[188] *See* 2003 Adopting Release, *supra* note 5, at 64962. We disagree with the commenter who asserted that ''the Commission's analysis . . . does not sufficiently explain its apparent reversal of the prior position that the appropriate way to promote efficiency, competition, and capital formation is to 'minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer' '' and that this is not accomplished by ''highlighting them in daily disclosures.'' *See* letter from Chamber II. In 2003, the Commission stated that ''Rule 10b–18's safe harbor conditions are designed to minimize the market impact of the issuer's repurchases.'' *See* 2003 Adopting Release, *supra* note 5. This statement was not in reference to the monthly repurchase disclosures the Commission adopted at the same time in Item 703, which the Commission stated were ''intended to enhance the transparency of issuer repurchases.'' *Id.* As noted throughout this release, the amendments we are adopting are similarly intended to enhance the transparency of issuer repurchases.

[189] *See* Proposing Release, *supra* note 2, at 8446.

[190] *See, e.g.,* letters from Chamber II and Profs. Lewis and White.

[191] *Id.*

[192] *See* Grossman, S.J. & Stiglitz, J.E., *On the Impossibility of Informationally Efficient Markets,* 70 Am. Econ. Rev. 393, 404 (1980) (noting that there is also an incentive to acquire information if ''no one is informed'').

[193] *See infra* Section V.B.1.

[194] *See* letter from Profs. Lewis and White.

[195] *Id.*

[196] For this reason, we also disagree with the commenter suggestion that we could have replaced disclosure of daily repurchase data with a requirement that the issuer discuss the impact repurchases may have had on managers' ability to reach earnings per share targets in its Compensation Discussion and Analysis (''CD&A'') required pursuant to 17 CFR 229.402(b) (Item 402(b) of Regulation S–K). *See id.* Such a discussion would not allow investors to identify which repurchases may have been affected by managers' incentives, and would not account for other avenues through which repurchases may affect compensation, such as by increasing stock prices shortly before a manager sells equity. Finally, this approach would also fail to identify instances in which issuers or their managers are driven by other concerns, such as internal EPS targets that do not affect compensation but instead affect reputation, retention, or relationships with creditors.

[197] *See* letter from Cravath.

to profit from repurchases. In addition, because there is no required cooling-off period for issuers, there is an increased risk that an issuer could adopt and then begin trading under a Rule 10b5–1 trading plan at a time when it may be aware of material nonpublic information.[198] Thus, additional disclosure (including whether the repurchase was intended to qualify for the affirmative defense under Rule 10b5–1) is necessary for investors to evaluate the efficiency and impacts of a repurchase.[199]

We also disagree with the commenter who asserted that to the extent managers benefit from repurchases through an increased share price, this increase also benefits other existing shareholders, and so no disclosure is needed.[200] Because managers can benefit from controlling the timing or volume of repurchases, it is more difficult for investors to interpret the extent to which repurchases increase or signal the issuer's fundamental value. Similarly, issuers may take actions to improve the returns on repurchases, such as real earnings management or repurchases while aware of material nonpublic information, that may benefit some existing shareholders, but at the potential expense of long-term liquidity and investor confidence.[201] Thus, notwithstanding that there may be some investors who benefit in these scenarios, daily repurchase disclosure is necessary to protect all investors and the efficient operation of securities markets because daily data, in combination with other data, would allow investors to infer when repurchases may have been timed to benefit managers or otherwise at the expense of some investors.

For similar reasons, we disagree with that commenter's request that we limit new disclosures to discussion about the effects of repurchases on an executive's compensation.[202] While such discussion might be generally informative about whether an issuer's repurchases may have been affected by managerial incentives, it would not reveal which particular repurchases were so affected, and would not address issuer efforts to achieve particular accounting targets for reasons unrelated to executive compensation, such as promotion, retention, or creditor preferences.

Further, we disagree with the suggestion by some commenters that we abandon or delay the amendments because of the recently-enacted tax on certain share repurchases,[203] because we expect that the tax will not meaningfully affect the rationales for the final amendments. As we describe in more detail below,[204] we acknowledge that it is possible that the new one percent tax on some repurchases will reduce annual repurchases from their current volume of roughly $950 billion,[205] although some indications are to the contrary.[206] While any reduction in repurchase activity would potentially diminish the costs and benefits of the final amendments, given the vast volume of current repurchases, we believe that that there will continue to be a compelling need for enhanced disclosure related to these transactions. Notwithstanding a commenter's suggestion that the tax would deter ''opportunistic'' buybacks,[207] to the extent that there are repurchases for which managerial self-interest plays some role, we do not expect the tax to have a significant effect on the intended benefits of the final amendments.[208]

Although a number of commenters asserted that daily reporting of daily data would generally result in an overload of information for investors,[209] our adoption of periodic reporting should significantly reduce these concerns, as some commenters noted.[210] In any event, we disagree that information about issuers' daily trading will overload investors.[211] Rather than overloading investors with superfluous data, the information required by the final amendments will provide them with additional insight into the precise timing of repurchases that they can use to evaluate the efficiency of and motives for the issuer's share repurchases in a way that is not possible to do with the current requirement to disclose monthly data.

We also disagree with commenters who asserted that more detailed information would harm smaller retail investors by making the information too disaggregated to easily parse.[212] The daily data will be required to be tagged using Inline XBRL, so these investors and other market participants will be able to collate that daily data to another level of detail to suit their level of sophistication. In some instances, monthly data fail to reveal key details about repurchase activity, such as whether repurchases occur before or after release of material nonpublic information.

Furthermore, greater transparency ultimately benefits all investors. For example, newly available data may incentivize intermediaries, such as investment advisers, to develop the capacity to analyze the data and provide their analysis to retail or other clients.[213] Additionally, to the extent that some traders may have greater capacity to quickly analyze information about daily repurchases,[214] our adoption of periodic reporting should mitigate any such advantage by allowing for fewer arbitrage opportunities.

Relatedly, some commenters raised concerns that daily disclosures would result in disclosure of information that is not material to investors,[215] or asked

[198] *See* Rule 10b5–1 Adopting Release, *supra* note 18, at 80369. In the Rule 10b5–1 Adopting Release, the Commission did not adopt a cooling-off period for issuers, stating that ''further consideration of potential application of a cooling-off period to the issuer is warranted.'' *Id.* at 80371–80372. Please see the discussion of new Item 408(d), *infra* Section III.D.

[199] For similar reasons, we disagree with the commenters who stated that compliance with Rule 10b–18 would make the proposed daily repurchase disclosures unnecessary. *See* letters from HP and SCG. As we discuss below in this section, whether a trade is intended to qualify for the non-exclusive safe harbor of Rule 10b–18 may help investors to understand the efficiency of a given repurchase. In addition, the fact that a repurchase is intended to qualify for the safe harbor does not significantly affect an executive's ability to time a personal trade to profit from a repurchase.

[200] *See* letter from Maryland Bar.

[201] *See, e.g.,* Cooper, L.A., Downes, J.F., and Rao R.P., *Short term real earnings management prior to stock repurchases,* 50 Rev. Quant. Fin. & Acct. 95 (2018) (reporting that managers use inventory and discretionary expenses, among other items, to manipulate reported earnings in advance of repurchases).

[202] *See* letter from Maryland Bar.

[203] *See, e.g.,* letters from Chamber III, Chamber V, and PSC.

[204] *See infra* Section V.A.2.

[205] *See* Section V.A.2 *infra* and note 384 and accompanying text.

[206] *See* Williams-Alvarez, J., *The 1% Stock-Buyback Tax Hasn't Slowed Repurchases. A Proposed 4% Tax Might,* Wall St. Journal, Mar. 2, 2023 and Avi-Yonah, R.S., *A Different Tax on Stock Buybacks, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4301215* (Dec. 13, 2022) (''[A] 1% tax on buybacks is unlikely to reduce buybacks.'').

[207] *See* letter from Chamber III.

[208] *See* Moore, *supra* note 34 (reporting that managerial benefit from repurchases is not sensitive to the cost of repurchasing).

[209] *See, e.g.,* letters from Dow, Kirkland Ellis, NYSE, SCG, and Vistra.

[210] *See, e.g.,* letters from Anthem Advisors, Cravath, and Jones Day.

[211] *See* letter from Roosevelt (stating that the daily repurchase disclosures would not create an overabundance of information for investors).

[212] *See, e.g.,* letters from ACLI, Armstrong, ASA, Chevron, Cravath, Dow, Guzman, Hecht, Home Depot, Jones Day, NYSE, PNC, Profs. Lewis and White, Quest, SCG, Shearman, SIFMA II, and Simpson Thacher.

[213] *Cf.* letter from Profs. Lewis and White (arguing that information asymmetry incentivizes market actors to acquire information for use by others).

[214] *See, e.g.,* letters from ACCO, Armstrong, ASA, BPI & Amer. Bankers Assoc., Business Roundtable, Cato, Chevron, Coalition, Cravath, Davis Polk, DLA Piper, Dow, Empire, FedEx, Guzman, Home Depot, HP, IBC, Jones Day, NAM, NYC Bar, Norfolk Southern, PA Chamber, Paul Weiss, PNC, Profs. Lewis and White, Quest, Shearman, SIFMA II, SCG, Simpson Thacher, Stephens, Sullivan, T. Rowe Price, Vistra, and Wilson Sonsini.

[215] *See* letter from Profs. Lewis and White.

the Commission to include a materiality standard in the final amendments.[216] We considered, but rejected, suggestions by these commenters to require disclosure only of material daily repurchases, such as repurchases that in the daily aggregate represent one percent or more of the issuer's outstanding shares. As we have explained, we believe that in many cases it is not only the amount, but also the timing of, repurchases that makes them informative to investors. Assessments of materiality for every repurchase conducted by the issuer would add significant costs. Further, limiting disclosures to a volume threshold, such as relatively large aggregate daily purchases, whether a set one percent figure or otherwise, could encourage issuers that prefer to avoid disclosure to inefficiently divide their planned transactions over multiple days or weeks, as pointed out by one commenter.[217]

We recognize that certain issuers could conduct a number of daily repurchases every quarter, which may result in lengthy additional disclosures in a filing. To address this concern, the final amendments require corporate issuers that report on Forms 10–Q and 10–K to file daily reporting data as an exhibit to their periodic reports instead of in the body of those reports. Listed Closed-End Funds will be required to provide their daily repurchase data in the body of Form N–CSR and FPIs that report on the FPI forms will be required to provide their daily repurchase data in the body of Form F–SR. Form N–CSR contains information on a range of specific topics (such as a fund's code of ethics or, in this case, repurchases) such that providing share repurchase disclosures in the body of the form presents fewer readability concerns. On the other hand, Form F–SR will be used exclusively to report daily repurchase data, so there is no concern that the daily repurchase data will obscure other disclosures in that form.

In another change from the proposal, the final amendments will require the daily repurchase data to be filed instead of furnished. Because daily repurchase data will be provided on a quarterly or semi-annual basis, depending on the status of the issuer, the liability concerns that may have been raised by a requirement to file daily repurchase data within the proposed one business day timeframe are alleviated. The issuer will have more time to obtain, verify, and compile the disclosure compared to the proposal. As a result, we find it appropriate for issuers to be subject to Exchange Act section 18 liability for the new repurchase disclosure, as they are currently for filings under Item 703 of Regulation S–K, and the information will be deemed incorporated by reference into filings under the Securities Act, which will be subject to Securities Act section 11 liability.

Additionally, the final amendments eliminate the requirement in current Item 703(a) of Regulation S–K that issuers disclose their monthly quantitative repurchase data in their periodic reports.[218] Presently, Item 703 requires corporate issuers reporting on domestic forms to provide monthly quantitative repurchase data on a quarterly basis in their Form 10–Qs and Form 10–Ks (for the issuer's fourth fiscal quarter), Item 16E of Form 20–F requires FPIs to provide monthly repurchase data in their annual reports on Form 20–F, and Item 14 of Form N–CSR requires Listed Closed-End Funds to provide monthly repurchase data in their semi-annual reports on Form N–CSR. In light of the new requirements to disclose daily repurchase data, we no longer believe this information is necessary. To the extent that investors, market participants, and others are interested in monthly repurchase data, they will be able to collate that data themselves, including by using Inline XBRL.

Consistent with the proposal, the final amendments do not include any exemptions.[219] We have not exempted any category of issuer because disclosure of daily repurchase data benefits all investors in issuers that conduct repurchases.[220] Additionally, to the extent that certain issuers, such as SRCs, have relatively high information asymmetries, disclosure about their repurchases may be more informative to investors. Moreover, although some issuers may provide similar information to other regulators, requiring all issuers to comply with the final amendments facilitates investor access because the information will be disclosed in a common location. In the case of financial institutions, while one commenter asserted that capital regulations by other regulators would prevent the institutions from engaging in opportunistic repurchases,[221] we are not aware of any specific regulations that would prevent executives at those institutions from profiting from repurchases, or that would limit repurchases at times the institution's managers are aware of material nonpublic information. We do not believe that any general insights into an issuer's capital planning that financial-institution regulations might offer will provide the level of detail investors would receive from disclosure of daily trade data and specific qualitative discussion of repurchase policies.

Moreover, the commenter suggested that the final amendments would encourage dividend distributions instead of share repurchases as the preferred mechanism for returning capital to shareholders, which would tend to undermine banks' fiscal soundness and, the commenter suggests, be inconsistent with Federal Reserve policies, because dividends represent a more binding commitment of future resources.[222] As with other issuers, we do not believe the amendments significantly affect the relative appeal of repurchases for financial institutions, and even if so, are also aware that financial institutions may have other alternatives to traditional dividends, such as special dividends, that may not raise the same concerns with respect to the commitment of future resources.

In addition, our adoption of quarterly disclosures mitigates some of the concerns of commenters seeking an exemption for various issuer categories,[223] which discussed the

[216] *See, e.g.,* letters from Hecht and NASAA.

[217] *See* letter from SIFMA II (stating that issuers may limit their average daily trading volume to try to ensure that sophisticated investors view the daily trades as immaterial, even if a larger volume would be more beneficial to shareholders).

[218] Additionally, the final amendments move much of disclosure in current Item 703(b) to new Item 703(a) and new Item 601(b)(26).

[219] MJDS filers currently do not provide repurchase disclosure analogous to Item 703 (for filers on the domestic forms) or Item 16E for foreign private issuers that report using Form 20–F. Consistent with that approach, we are not imposing the amended repurchase disclosure requirements on Canadian issuers that file using the MJDS because those issuers are subject to a separate reporting regime. Under the MJDS, eligible Canadian issuers may satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulatory authorities. *See Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers,* Release No. 33–6902 (Jun. 21, 1991) [56 FR 30036 (July 1, 1991] (''MJDS Release'').

[220] As noted above, several commenters recommended that we exempt issuers conducting repurchases with respect to securities that are not traded on an exchange from the daily repurchase disclosures. *See* letters from Nareit and Publix. However, as discussed in Section V.D.3, such an exemption would deprive investors in these issuers of the informational benefits of the final amendments, which might be relatively more consequential for investors in issuers with a thin trading market or without a trading market that lack the price discovery from active trading. In addition, we note that these issuers are already required to provide share repurchase disclosures under existing Item 703.

[221] *See* letter from BPI & Amer. Bankers Assoc.

[222] *See id.*

[223] *See* letters from ABA Committee, ACCO, ADISA, Better Markets I, BPI & Amer. Bankers Assoc., BrilLiquid, CBA, CFA Institute, CII, Cravath,

burden of the proposed requirement to provide daily repurchase data one business day after execution of the issuer's share repurchase order. The final amendments do not require issuers to provide daily repurchase data the day after execution. As a result, we expect the change from the proposal to require quarterly reporting (or semi-annual reporting for Listed Closed-End Funds) to substantially alleviate commenters' cost concerns for all issuer categories.[224]

Additionally, we note that some commenters asked the Commission specifically to exempt FPIs that are required to provide share repurchase information in their home country disclosures and furnish that information on Form 6–K.[225] Consistent with our requirements generally,[226] if an FPI's home country disclosures furnished on a Form 6–K satisfy the Form F–SR requirements, it can incorporate by reference its Form 6–K disclosures into its Form F–SR. Therefore, we do not believe such an exemption is necessary. FPIs that already disclose daily data in another jurisdiction will experience only incremental burdens in reporting those transactions. While these data may already be available to some investors, making them accessible to all investors, at the same frequency as for corporate issuers that file on domestic forms, will allow investors to receive the same information for FPIs as they receive for corporate issuers that file on domestic forms, regardless of the form FPIs choose to use.[227] To the extent that these disclosures may benefit an issuer's competitors, placing FPI filing obligations on the same tempo as corporate issuers that file on domestic forms will also help to level competition between FPIs and those issuers.

Other commenters requested that FPIs not be required to disclose the total number of shares repurchased in their home countries in reliance on the safe harbor in Rule 10b–18 nor the total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c).[228] We believe, however, that these disclosures help investors to understand the purposes for a repurchase. The final amendments, therefore, include those disclosure requirements. To the extent that issuers do not rely on the safe harbor or affirmative defense for trades conducted outside the United States, any disclosure obligation on FPIs will be minimal. If such issuers are concerned about any negative inferences, they may include additional disclosure explaining why they chose not to rely on such safe harbor or affirmative defense.

We are revising the proposed requirement to disclose whether purchases were ''made in reliance on'' the Rule 10b–18 non-exclusive safe in response to commenters' concerns that issuers are only able to indicate their intent to comply with the safe harbor. The final rule will therefore require disclosure of purchases that were ''intended to qualify for'' the safe harbor.[229]

We have also modified the manner in which issuers will report certain information relating to Rules 10b–18 and 10b5–1. Proposed Form SR would have required issuers to disclose, in a table, the total number of shares purchased daily in reliance on Rule 10b–18 or intended to qualify for the affirmative defense provisions of Rule 10b5–1(c). The proposed amendments to Item 703, Form 20–F, and Form N–CSR would have similarly required issuers to disclose, by footnote to their monthly repurchase table or the narrative accompanying the table, the number of shares purchased in reliance on Rule 10b–18 and the number intended to qualify for the affirmative defense provisions of Rule 10b5–1(c) (and if so, the date(s) the plan was adopted or terminated).

The final amendments require issuers to disclose, in tabular form, the number of shares purchased daily in reliance on Rule 10b–18 or intended to qualify for the affirmative defense provisions of Rule 10b5–1(c), as proposed. In a change from the proposal, the final amendments also require issuers to disclose, by footnote to the daily repurchase table, the date any plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) for the shares was adopted or terminated. The proposed amendments would have required this information in the narrative disclosures accompanying the monthly repurchase table required by Item 703, Form 20–F, and Form N–CSR. After changing the frequency that issuers must provide their daily quantitative share repurchase disclosure from one business day after execution, as proposed, to quarterly or semi-annually in the final amendments, and deleting the monthly repurchase table from Item 703, Form 20–F, and Form N–CSR, we believe that requiring this Rule 10b–18 and Rule 10b5–1(c) information in both the table and the narrative discussion would be duplicative. Requiring this information with the table would be more efficient for issuers and easier to understand for investors.

Contrary to some commenters, we believe that whether an issuer intended to make use of Rule 10b–18 or Rule 10b5–1 in conducting its repurchases provides useful information to investors. The disclosure as to whether purchases were intended to qualify for the Rule 10b–18 non-exclusive safe harbor or the affirmative defense under Rule 10b5–1 provides investors with deeper insight into how an issuer has structured and designed its repurchase program. The disclosure with respect to Rule 10b–18 allows investors to gauge whether the given repurchase program is designed to ''minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent forces.'' [230] Further, this disclosure could provide a more informed understanding of how many shares may yet be purchased under the timing and volume parameters of Rule 10b–18, reducing information asymmetries for current and prospective shareholders. In these ways, the disclosure will allow investors to better evaluate the efficiency and impacts of a repurchase. While some commenters indicated that as a matter of practice repurchase programs are designed to meet both the Rule 10b–18 and Rule 10b5–1 safe harbors,[231] issuers are not required to do so. Additionally, with disclosure of whether an issuer intended to satisfy the affirmative defense under Rule 10b5–1,

Hecht, IBC, ICGN, ICI I, Nareit, NYC Bar, NYSE, Profs. Lewis and White, Roosevelt, SIFMA II, Sullivan, TIAA, TotalEnergies, and VEUO.

[224] *See, e.g.,* letters from ICI I (stating that, in the event the Commission determines to apply the proposal to Listed Closed-End Funds, it should ''exclude them from the Form SR reporting requirements and, instead, require funds to provide the daily information less frequently in their Form N–CSR'' because of ''the unique characteristics of funds, including their status as pass-through investment vehicles with disclosed NAVs that promptly reflect the effects of share repurchases, and the diminished concerns that fund insiders will misuse share repurchases for their own self-interest'') and Roosevelt (stating generally that ''it is likely that these foreign issuers are already disclosing this information in other jurisdictions, so would not incur compliance costs'').

[225] *See, e.g.,* letters from SIFMA II, Sullivan, and VEUO.

[226] *See* 17 CFR 240.12b–23.

[227] One commenter asserted that EU regulations with respect to insider trading and market manipulation reduce the need for additional disclosure with respect to repurchases. *See* letter from VEUO. We disagree with this suggestion for essentially the same reasons we disagree with commenters who made similar arguments regarding Rules 10b5–1 and 10b–18.

[228] *See, e.g.,* letters from SIFMA II and VEUO.

[229] *See, e.g.,* letters from SIFMA II and Sullivan. We note the commenters suggested that we adopt the phrase ''intended to comply with'' the safe harbor, but we believe it is more clear to require that issuers disclose whether trades were ''intended to qualify for'' the safe harbor.

[230] 2003 Adopting Release, *supra* note 5, at 64953.

[231] *See, e.g.,* letters from HP and Simpson Thacher.

investors can more readily determine whether the issuer's managers took steps to mitigate the possibility of conducting a repurchase while in possession of material nonpublic information.

Moreover, we are cognizant of the concern shared by some commenters that the required Rule 10b5–1(c) and Rule 10b–18 disclosures could lead to unfounded speculation or cause negative inferences.[232] Rule 10b–18 specifically disclaims any negative inference from an issuer's choice not to make use of the safe harbor, and Rule 10b5–1 is similarly described as an ''affirmative defense.'' Therefore, we believe that any unwarranted inferences from disclosure that an issuer did or did not use such safe harbor or defense would be limited. We believe the required disclosures achieve a proper balance between that concern and the need of investors for additional information concerning an issuer's share repurchases.

We note that one commenter suggested that the final amendments should include additional disclosures regarding an issuer's Rule 10b5–1(c) plan, such as information on adoption, modification, suspension, or termination of the plan; the maximum number of shares planned for sale under the plan; and any suspensions or terminations of a planned repurchase pursuant to such a plan.[233] We have not included these additional required disclosures relating to Rule 10b5–1(c) because we believe the required information, together with existing obligations of issuers to disclose material changes to their share repurchase plans whether under Rule 10b5–1 or otherwise, is sufficient to inform investors about an issuer's repurchases. The required disclosures achieve an appropriate balance between the concerns expressed by commenters and the need of investors for additional information concerning an issuer's share repurchases. As discussed above in this section, if any of the additional disclosures suggested by the commenter or other additional disclosures are material and necessary to make other repurchase disclosures not misleading under the circumstances, the issuer must provide those disclosures.[234]

Further, we note that some commenters recommended that we repeal Rule 10b–18 and replace it with bright-line limits,[235] and that we not apply the proposed Rule 10b5–1(c) and Rule 10b–18 disclosures to FPIs.[236] Repealing and replacing Rule 10b–18 is beyond the scope of this rulemaking. Consistent with our reasoning for not allowing an exemption for certain issuers relating to the daily quantitative repurchase disclosures, we do not believe the final amendments should exempt FPIs from the Rule 10b5–1(c) and Rule 10b–18 disclosures. These disclosures benefit all investors in issuers that conduct repurchases.

One commenter expressed the view that the proposed amendments would interfere with state law.[237] The commenter asserted that the Commission's purpose in proposing the amendments was to deter share repurchases generally, which would ''regulate boardroom decisions over which the Commission has no authority.'' The final amendments do not regulate repurchases or board consideration of them, nor are they intended to deter share repurchases. While it is possible that the amendments could result in some reduction in issuer repurchases,[238] we do not expect these additional disclosure requirements to have a significant deterrent effect on these transactions overall. In any case, the purpose of the final amendments is to provide shareholders with additional data about the timing and other details of the issuer's repurchases to allow them to make more informed investment and voting decisions, consistent with our authority under the Exchange Act.

Another commenter asserted that the proposed amendments' daily disclosure requirements would violate the First Amendment.[239] The commenter claimed that the Commission failed to explain why monthly disclosures would not be adequate and did not acknowledge the compelled-speech burdens that come with a next-day reporting regime. The commenter also noted that the proposed amendments' ''unjustified insistence on next-day reporting'' were not ''adequately tailored'' to the governmental interests at stake and to reduce instances of compelled speech.

We disagree with the commenter's assertion that the proposed amendments would violate the First Amendment. As we have explained earlier in this section, periodic disclosure of daily repurchases provide a level of detail that will allow investors to assess the efficiency of, and motives for, those transactions. Additionally, daily repurchase disclosure allows investors to monitor and evaluate the issuer's share repurchases and their effects on the market for the issuer's securities. This disclosure is thus factual in nature and advances important interests as discussed throughout this release. Further, after considering comments, the final amendments require periodic reporting of an issuer's daily repurchases, as opposed to daily reporting of an issuer's daily repurchases, which greatly mitigates the associated burdens.

Finally, we note that a number of commenters asked the Commission to clarify certain terms, times, and transactions, including more precisely defining ''share repurchase program,'' [240] ''executed,'' [241] ''business day,'' [242] ''before the end;'' [243] addressing whether issuers operating in time zones other than Eastern Time would be given additional time to file their Form SR; [244] and clarifying whether the proposal would encompass withhold-to-cover shares.[245] Because the final amendments do not require issuers to provide their daily quantitative repurchase disclosures one business day after execution of their share repurchase order, there is no longer a need for many of these requested clarifications.

We do not believe it is necessary to make any further clarifications based on the other comments received. The main difference between the current Item 703 quantitative repurchase disclosures and the quantitative repurchase disclosures in the final amendments is that issuers are required to aggregate their share repurchases on a daily basis instead of on a monthly basis. Therefore, the terms, times, and transactions used for, and applicable to, the current Item 703 disclosure requirements should be applied to the final amendments.[246]

---

[232] *See, e.g.,* letters from Maryland Bar and Sullivan.

[233] *See* letter from CFA Institute.

[234] *See* 17 CFR 240.12b–20 (''Rule 12b–20'').

[235] *See, e.g.,* letters from AFREF *et al.,* CFA Institute, CII, Lazonick & Jacobson, Oxfam, and Prof. Palladino.

[236] *See* letter from SIFMA II.

[237] *See* letter from Cato.

[238] *See infra* Section V.A.2.

[239] *See* letter from Chamber III.

[240] *See* letter from Cravath.

[241] *See* letters from Chamber II, Cravath, DLA Piper, FedEx, HudsonWest, Simpson Thacher, and Wilson Sonsini.

[242] *See* letter from Bishop.

[243] *See id.*

[244] *See* letters from Chevron and HP.

[245] *See* letter from Nash.

[246] For example, as we discussed in the Proposing Release, the Commission uses a commonly understood meaning of the term ''execution,'' which will not change based on the final amendments. *See* Proposing Release, *supra* note 2, at n. 23. We are not adopting the suggestion of one commenter to instead require reporting based on the settlement date rather than the execution date, *see* letter from NASAA, because the commenter's

B. Narrative Revisions to Item 703 of Regulation S–K, Form 20–F, and Form N–CSR Additional Disclosure

1. Proposed Amendments

The Commission proposed to revise and expand the disclosure requirements in Item 703 of Regulation S–K, Form 20–F, and Form N–CSR to work in conjunction with proposed Form SR to provide investors with more detailed and qualitative information that they could use to evaluate issuer share repurchases. Specifically, the proposal would require an issuer to disclose:

- The objective or rationale for its share repurchases and process or criteria used to determine the amount of repurchases;
- Any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions;
- Whether it made its repurchases pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) and the date that the plan was adopted or terminated; and
- Whether purchases were made in reliance on the Rule 10b–18 non-exclusive safe harbor.

Additionally, the Commission proposed to require that issuers disclose if any of their officers or directors subject to the reporting requirements under Exchange Act section 16(a) purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within ten business days before or after the announcement of an issuer purchase plan or program by checking a box before the tabular disclosure of issuer purchases of equity securities.

2. Comments on the Proposed Amendments

a. Comments on Objective or Rationale for Share Repurchases, and Process or Criteria Used To Determine the Amount of Repurchases

A number of commenters supported the proposal to require an issuer to disclose its objective or rationale for its share repurchases, and the process or criteria used to determine the amount of repurchases.[247] However, most commenters who discussed this proposal opposed it.[248] These commenters expressed concern that the required disclosure could divulge competitive or sensitive information that would be harmful to the issuer,[249] or result in boilerplate disclosure that would not prove meaningful to investors.[250]

Other commenters objected to the proposal on the basis that the disclosures could be misleading because they would show only a small part of a company's overall liquidity and capital allocation policies.[251] These commenters suggested that any required objective or rationale disclosures concerning an issuer's share repurchase plans should be included within a filing's Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A'') section, so that the disclosures can be evaluated within the larger context of liquidity and capital allocation. Other commenters suggested that the final amendments should not require the disclosure of all share repurchase plans, but only those that are material to the issuer.[252] Another commenter asserted that the disclosures would violate the First Amendment because they would require issuers to provide disclosure other than ''purely factual, uncontroversial information'' [253] and would force the issuer to speak when doing so would be unduly burdensome.[254]

In contrast, other commenters suggested that the Commission require more disclosure than was proposed.[255] A few of these commenters recommended that issuers be required to announce all of their share repurchase plans [256] in a standardized format [257] or on Form 8–K.[258] A number of commenters stated that the final amendments should require issuers to disclose the manner in which they are funding their share repurchases [259] out of the concern that some issuers may borrow funds to finance those transactions.[260] One commenter asserted that the final amendments should require a five-year lookback to compare the average price per repurchased share against the price per share received pursuant to new issuances and stock compensation plans.[261] Some commenters recommended disclosure about the impact of share repurchases on performance targets,[262] and other commenters suggested that we adopt amendments requiring issuers to disclose whether they considered other uses for the funds being used for the share repurchases.[263]

b. Comments on Policies and Procedures Relating to Purchases and Sales of the Issuer's Securities by Its Officers and Directors During a Repurchase Program

A number of commenters supported the proposal to require issuers to disclose any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions.[264] Some commenters recommended that the Commission adopt a more comprehensive requirement than was proposed.[265] A few of these commenters asked the Commission to prohibit corporate insider trading before, during, and after buyback announcements and execution.[266] One commenter recommended requiring disclosure of any directors, officers, and ten percent

concerns about the execution date were tied closely to potential errors that might arise under an execution-date regime with daily filing. Because we are adopting quarterly reporting, we think the commenter's concerns about the execution date will be greatly lessened, consistent with our experience with Item 703.

[247] *See, e.g.,* letters from CalPERS, CFA Institute, CII, ICGN, Prof. Palladino, NASAA, Public Citizen, Roosevelt, and Senators Rubio & Baldwin.

[248] *See, e.g.,* letters from BPI & Amer. Bankers Assoc., Chamber II, Coalition, Cravath, Dow, Jones Day, Kirkland Ellis, Morris, NAM, PNC, Profs. Lewis and White, SCG, Shearman, SIFMA II, Sullivan, and Vistra.

[249] *See, e.g.,* letters from BPI & Amer. Bankers Assoc., PNC, Profs. Lewis and White, Shearman, SIFMA II, and SCG.

[250] *See, e.g.,* letters from Chamber II, Coalition, Cravath, Jones Day, Morris, NAM, and Sullivan.

[251] *See, e.g.,* letters from ABA Committee, Dow, Profs. Lewis and White, Quest, and Shearman. One of these commenters noted that issuers often include a discussion of repurchase activity in their MD&A section. *See* letter from Quest.

[252] *See, e.g.,* letters from Cravath and Profs. Lewis and White.

[253] *See* letter from Chamber III (citing *NIFLA* v. *Becerra,* 138 S. Ct. 2361, 2372 (2018)).

[254] *See* letter from Chamber III (citing *Am. Meat Inst.* v. *USDA,* 760 F.3d 18, 34 (D.C. Cir. 2014)).

[255] *See, e.g.,* letters from AFREF *et al.,* Better Markets I, BrilLiquid, CalPERS, CFA Institute, Form Letter A, ICGN, Prof. Palladino, Roosevelt, and Senators Rubio & Baldwin.

[256] *See, e.g.,* letters from BrilLiquid, CalPERS, CFA Institute, ICGN, and Prof. Palladino.

[257] *See* letter from CalPERS.

[258] *See, e.g.,* letters from BrilLiquid and ICGN.

[259] *See, e.g.,* letters from AFREF *et al.,* Better Markets I, CalPERS, CFA Institute, Form Letter A, Prof. Palladino, Roosevelt, and Senators Rubio & Baldwin.

[260] *See, e.g.,* letters from AFREF *et al.,* CalPERS, CFA Institute, Form Letter A, Prof. Palladino, and Senators Rubio & Baldwin.

[261] *See* letter from CFA Institute.

[262] *See, e.g.,* letters from CFA Institute and CII.

[263] *See, e.g.,* letters from CFA Institute and Form Letter A.

[264] *See, e.g.,* letters from CII and CFA Institute.

[265] *See, e.g.,* letters from AFREF *et al.,* Better Markets I, CII, Oxfam, Prof. Palladino, and Public Citizen.

[266] *See, e.g.,* letters from AFREF *et al.,* Better Markets I, Oxfam, Prof. Palladino, and Public Citizen.

shareholders who purchased or sold shares within ten days of an issuer's buyback program announcement.[267]

A few commenters, however, opposed this proposal.[268] One of these commenters [269] suggested that this information would be more appropriate in 17 CFR 229.407 (''Item 407 of Regulation S–K''), which contains disclosure requirements regarding corporate governance. Another commenter asserted that the proposed disclosure could create the erroneous expectation that an issuer must have such policies and procedures when it may not have them.[270] One commenter suggested that this requirement would effectively ban such insider sales.[271]

c. Comments on Checkbox Requirement

Several commenters supported the proposed requirement for issuers to disclose if any of their officers or directors subject to the reporting requirements under section 16(a) of the Exchange Act purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within ten business days before or after the announcement of an issuer purchase plan or program by checking a box before the tabular disclosure of issuer purchases of equity securities.[272] Several of these commenters specifically supported including the ten business-day period.[273] One commenter noted that the proposal ''would allow investors to more fully understand how officer and director stock purchase and sale activities interrelate with an issuer's share repurchase program.'' [274] Another commenter stated that the checkbox ''would allow investors to determine whether corporate insiders are potentially benefiting unfairly from knowledge asymmetry by, for example, purchasing shares ahead of an issuer's repurchase plan announcement, knowing that share prices usually rise with such an announcement.'' [275]

Other commenters, however, opposed the proposal.[276] Most of the commenters opposed to the proposal indicated that the proposed checkbox requirement would be unnecessary [277] because it would be duplicative of the required disclosures in Exchange Act section 16,[278] and because trading on material nonpublic information is already prohibited.[279] Similarly, one commenter stated that insider transactions occurring after a repurchase plan announcement should be excluded from the checkbox requirement because the information is already public.[280] Another commenter stated that, if Form SR is adopted, the data from that form should suffice.[281] One commenter asserted it opposed the proposal because insiders do not have access to any particular repurchase information that would give them a trading advantage.[282] Some commenters noted that FPIs would be effectively excluded from the checkbox requirement because they are exempt from Exchange Act section 16 reporting.[283]

Several commenters expressed concern about the potential for misinterpretations as a result of the checkbox.[284] One commenter claimed that the checkbox requirement could incorrectly imply that trading outside the checkbox window is always permissible.[285] Another commenter stated that the checkbox could cause investors to assume incorrectly that the issuer engaged in inappropriate behavior.[286] Some commenters indicated that the checkbox requirement could give the incorrect impression that insiders were trading securities as a result of the issuer's repurchase announcement instead of for other reasons, such as long-established Rule 10b5–1(c) plans [287] or automatic sales to fund tax withholding on share vesting.[288]

Some commenters asserted that Rule 10b5–1(c) plan transactions or automatic sales to fund tax withholding on share vesting should be excluded from the checkbox requirement.[289] One commenter asked that the Commission state that ''officers and directors trading in a company's securities at the same time that the company is buying back its own securities is not in violation [of] any rule or otherwise harmful.'' [290] Another commenter stated that insider purchases or sales should be included in the checkbox requirement only if an issuer's repurchase plan is publicly announced and implemented.[291] A different commenter recommended that the Commission permit issuers to include context for the checkbox so that trading activities are not misconstrued.[292]

Finally, one commenter asked the Commission to clarify how the checkbox would apply to issuers with multiple classes of stock, each with its own repurchase plan; whether announcing the increase of an existing share repurchase plan would constitute the announcement of a new repurchase plan for purposes of the requirement; and whether an issuer may rely on Forms 3,[293] 4,[294] and 5 [295] filed with the Commission to determine whether it should check the box.[296]

3. Final Amendments

We are adopting final amendments relating to the revision and expansion of the disclosure requirements in Item 703 of Regulation S–K, Form 20–F, and Form N–CSR, with some modifications from the proposal in response to comments received. Consistent with the proposed amendments, these final amendments work in conjunction with the new periodic quantitative repurchase disclosures to provide investors with more detailed information to evaluate an issuer's share repurchases. We continue to believe that these disclosures will help investors evaluate whether the issuer is engaged

[267] *See* letter from CII.

[268] *See, e.g.,* letters from ABA Committee and PNC.

[269] *See* letter from ABA Committee.

[270] *See* letter from PNC.

[271] *See* letter from Maryland Bar.

[272] *See, e.g.,* letters from Better Markets I, CFA Institute, Hecht, and ICGN. One of these commenters suggested expanding the checkbox period to 30 days before and after adoption of a repurchase plan because ''[i]nsiders will know well before the announcement that the company is considering a stock repurchase program.'' *See* letter from Hecht.

[273] *See, e.g.,* letters from Better Markets I, CFA Institute, and ICGN. *See also* letter from Hecht (supporting a 30-day period).

[274] *See* letter from CFA Institute.

[275] *See* letter from Better Markets I.

[276] *See, e.g.,* letters from ABA Committee, BrilLiquid, Chamber II, Cravath, DLA Piper, HP, Quest, and Simpson Thacher.

[277] *See, e.g.,* letters from ABA Committee, BrilLiquid, Chamber II, Cravath, DLA Piper, Quest, and Simpson Thacher.

[278] *See, e.g.,* letters from ABA Committee, DLA Piper, and Simpson Thacher.

[279] *See* letter from Quest.

[280] *See* letter from DLA Piper.

[281] *See* letter from Cravath.

[282] *See* letter from HP.

[283] *See, e.g.,* letters from CBA and Cravath.

[284] *See, e.g.,* letters from ABA Committee, Chamber II, Cravath, Quest, and Vistra.

[285] *See* letter from Cravath.

[286] *See* letter from Chamber II (stating that ''any positive correlation between share repurchases and insider selling is likely driven by blackout periods and not opportunistic insider trading around repurchases.'' *But see* letter from Prof. Jackson, Dr. Hu, and Dr. Zytnick (refuting that commenter's analysis by providing their own analysis showing that, even after controlling for blackout periods, insider sales are significantly higher during repurchases.).

[287] *See, e.g.,* letters from Cravath, DLA Piper, and PNC.

[288] *See* letter from PNC.

[289] *See, e.g.,* letters from Cravath, DLA Piper, and PNC.

[290] *See* letter from Quest.

[291] *See* letter from Cravath (''We also do not believe that a checkbox requirement is appropriate in the context of repurchase plans that are not publicly announced.'').

[292] *See* letter from ABA Committee.

[293] 17 CFR 249.103.

[294] 17 CFR 249.104.

[295] 17 CFR 249.105.

[296] *See* letter from ABA Committee.

in efficient repurchases. Specifically, the final amendments require an issuer to disclose:

- The objectives or rationales for each repurchase plan or program and process or criteria used to determine the amount of repurchases; [297]
- Any policies and procedures relating to purchases and sales of its securities by its officers and directors during a repurchase program, including any restriction on such transactions; and
- Whether any of its directors and officers subject to the reporting requirements under Exchange Act section 16(a) (for domestic corporate issuers and Listed Closed-End Funds), or directors or senior management that would be identified pursuant to Item 1 of Form 20–F (for FPIs, whether filing on the forms exclusively available to FPIs or on the domestic forms) purchased or sold shares or other units of the class of the issuer's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced repurchase plan or program within four business days before or after the issuer's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program by checking a box before the tabular disclosure of issuer purchases of equity securities.[298]

Additionally, the final amendments require disclosure of the number of shares (or units) purchased other than through a publicly announced plan or program, and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions), and certain disclosures for publicly announced repurchase plans or programs, including:

- The date each plan or program was announced;
- The dollar amount (or share or unit amount) approved;
- The expiration date (if any) of each plan or program;
- Each plan or program that has expired during the period covered by the table; and
- Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

This same information is already required to be disclosed in our current rules. In current Item 703, this information is required in a footnote to the monthly quantitative share repurchase disclosure table. The final amendments do not change the substance of these requirements. The only change is that the final amendments change the form of the requirements from an instruction to the main text of Item 703 and no longer require the disclosure to be part of a footnote to the monthly table, as the monthly table will no longer exist. Instead this disclosure will be required in the main text of the narrative discussion. We note that some commenters suggested that the final amendments should include a number of additional, more prescriptive disclosure requirements relating to the new narrative requirements that are being added to Item 703, Form 20–F, and Form N–CSR.[299] The disclosure we are adopting will provide the information necessary for investors to evaluate the efficiency of issuer repurchases and their impact on the market, and we do not believe that the particular individual disclosures suggested by commenters are needed. To the extent further material information is necessary to make such disclosures not misleading, the issuer will be required to provide that information under existing Rule 12b–20.[300]

Other commenters suggested that certain aspects of the disclosure requirements in new Item 703(a) [301] should not be adopted because they could result in misleading information. We disagree. We believe that the required narrative disclosures in the final amendments provide the information necessary for investors to understand and evaluate an issuer's share repurchases in a clear and concise manner. For example, the checkbox requirement will assist investors in identifying issuers where there is a possibility that repurchases affected the value of executive compensation, permitting investors to further investigate whether this possibility should affect their assessment of the repurchase.[302] If an issuer believes any of the required disclosures would result in misleading or confusing information, the issuer may provide additional disclosure to put the required information in context. Additionally, as with all of our required disclosures, under our rules issuers are required to provide any additional information necessary to make the required disclosure not misleading.[303] Moreover, issuers are not foreclosed from discussing their repurchases in other sections of the document, such as in the MD&A section or in the corporate governance section required by Item 407 of Regulation S–K.

Some commenters stated that they opposed the requirement in proposed Item 703(a)(1) to disclose the objective or rationale for an issuer's share repurchases and process or criteria used to determine the amount of repurchases because this requirement would result in the exposure of competitive or sensitive information.[304] One commenter asked the Commission to clarify that the final amendments are not intended to require an issuer to disclose such information.[305] Although the disclosures required by the final amendments should convey a thorough understanding of the issuer's objectives or rationales for the repurchases, and the process or criteria it used in determining the amount of the repurchase, the final amendments do not require issuers to provide disclosure at a level of granularity that would

[297] In a clarifying change from the proposal, the final amendments will require disclosure of the ''objectives or rationales'' rather than the ''objective or rationale'' for each repurchase plan or program to make clear that the disclosure is not limited to one objective or rationale if an issuer has more than one.

[298] As noted above, while we are not adopting the proposed requirement to provide narrative disclosure under Item 703 regarding trades intended to qualify for the non-exclusive safe harbor of Rules 10b–18 or the affirmative defense under Rule 10b5–1(c), we are requiring substantially the same information be disclosed in tabular fashion in other registrant filings. *See supra* notes 229–230 and accompanying text.

[299] Some commenters suggested particular additional disclosures such as a five-year lookback, *see* letter from CFA Institute, the impact of share repurchases on performance targets, *see* letters from CFA Institute and CII, or alternative uses for the share repurchase funds, *see* letter from CFA Institute and Form Letter A.

[300] *See* Rule 12b–20 (''In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.'').

[301] The information required in new Item 703(a) would have been required in proposed Item 703(c). We made this change in the final amendments because we are requiring the tabular disclosure of the daily quantitative repurchase data in new Item 601(b)(26) instead of proposed Item 703(a) and (b). *See infra* Section III.A.3.

[302] In response to the commenter who suggested we should exclude from this disclosure automatic sales to fund certain tax withholding ''to avoid the risk that the checked box would be provocative despite the fact that the underlying transaction would only reflect a decision made, in most cases, a year or more prior to the sale and a decision not typically made by the officer or director personally,'' we note that in such a circumstance, the issuer could provide additional disclosure as context for the required disclosure, which may avoid the concern raised by the commenter. *See* letter from PNC.

[303] *See* Rule 12b–20.

[304] *See, e.g.,* letters from BPI & Amer. Bankers Assoc., PNC, Profs. Lewis and White, Shearman, SIFMA II, and SCG.

[305] *See* letter from PNC.

reveal any competitive or sensitive information beyond what may already be gleaned from other disclosures regarding the business and financial condition of the issuer.

Other commenters opposed this requirement because, they asserted, it would result in boilerplate disclosure.[306] We disagree and note that the narrative disclosure, in conjunction with the new periodic quantitative repurchase disclosures, must provide investors with sufficiently detailed information to evaluate an issuer's share repurchases. The narrative disclosure also should be appropriately tailored to an issuer's particular facts and circumstances.

We expect issuers to provide the required disclosure without relying on boilerplate language, and we received several helpful suggestions from commenters in that regard.[307] Although not an exclusive or exhaustive list, commenters suggested that issuers could avoid boilerplate language by discussing other possible ways to use the funds allocated for the repurchase [308] and comparing the repurchase with other investment opportunities that would ordinarily be considered by the issuer, such as capital expenditures and other uses of capital.[309] Issuers could also discuss the expected impact of the repurchases on the value of remaining shares.[310] Moreover, in connection with their disclosure of the objectives or rationales for a repurchase, issuers could discuss the factors driving the repurchase, including whether their stock is undervalued, prospective internal growth opportunities are economically viable, or the valuation for potential targets is attractive.[311] Issuers might additionally discuss the sources of funding for the repurchase, where material, such as, for example, in the case where the source of funding results in tax advantages that would not otherwise be available for a repurchase.

We disagree with the commenter who asserted that the amendments would violate the First Amendment on the grounds that the required disclosures call for controversial opinions, not ''purely factual'' information.[312] As we have explained, there are a number of reasons why issuers undertake share repurchases, and an issuer's purpose in undertaking a particular repurchase is significant information that can aid investors in assessing the repurchase, including its purposes and impacts on the firm and the issuer's value. The requirement that an issuer disclose the objectives or rationales behind a repurchase can be directly informative for investors and provide investors with the proper context to understand the daily quantitative repurchase disclosures (such as by allowing investors to confirm that the daily pattern of trades is consistent with the issuer's stated purpose for those repurchases) and to monitor and evaluate the issuer's share repurchase and its effects on the issuer's securities. This requirement thus involves disclosure that is factual in nature, advances important interests as discussed throughout this release, and complies with the First Amendment.

We also disagree with the commenter who suggested that the requirement to disclose the issuer's policies and procedures relating to purchases and sales of its securities by its officers and directors during a repurchase program would effectively ban such insider sales.[313] Disclosure of any such policies may aid investors in determining the extent to which executive's interests may have, at least in part, helped motivate repurchases. This is a disclosure obligation that will provide investors with additional relevant disclosures about issuer repurchases and not a requirement for an issuer to have, adopt, or change any such policies and procedures.

In a modification from the Proposed Rule, we are requiring that issuers indicate by checkbox that covered executives have engaged in equity transactions within four business days of a repurchase announcement, rather than the ten business days proposed. While the checkbox is intended to assist investors in identifying transactions that warrant closer scrutiny, a larger window of time may potentially result in added attention for a number of transactions that are not as significant, reducing the value of the checkbox.[314]

We disagree with the commenter who stated that we should not impose a checkbox requirement for transactions close in time to a repurchase announcement because, the commenter asserted, such sales are only coincidences of the corporate calendar and thus cannot represent efforts by managers to profit from repurchases.[315] As discussed above, and as noted by other commenters, the predictability of the corporate calendar may instead facilitate executive efforts to benefit personally from repurchases, and thus we continue to believe the checkbox is appropriate.[316] For similar reasons, we disagree with the commenter who stated that the checkbox is not needed in the case of an executive whose trades would qualify for the affirmative defense under Rule 10b5–1, because such trades could not reflect nonpublic information,[317] and the commenter that stated that the checkbox requirement should apply only to repurchase plans that are publicly announced and implemented.[318] Because repurchases often occur at relatively predictable times in the corporate calendar, executives can schedule trades in advance to potentially benefit from those repurchases that do occur at such times.[319]

Several commenters who opposed the proposed checkbox requirement asserted that the requirement is unnecessary,[320] as it duplicates the existing Exchange Act section 16 disclosures for issuers that file on domestic forms.[321] While the checkbox does provide information available in other disclosures, we believe that it would still be helpful to investors. The checkbox eliminates the need for investors to review Exchange Act section 16(a) filings to determine if any

[306] *See, e.g.,* letters from Chamber II, Coalition, Cravath, Jones Day, Morris, NAM, and Sullivan. We note, however, that one commenter asserted that, even if the final amendments lead to boilerplate disclosures, the disclosure would still benefit investors because it would provide investors with more information than they have currently, it could become a point of engagement, and shareholders would be able to inquire about allocation decisions or provide support for the repurchase. *See* letter from ICGN.

[307] *See, e.g.,* letters from AFREF *et al.,* CFA Institute, CII, Hecht, Prof. Palladino, Roosevelt, and Senators Rubio & Baldwin.

[308] *See, e.g.,* letters from AFREF *et al.* and Senators Rubio & Baldwin.

[309] *See* letter from Senators Rubio & Baldwin.

[310] *See, e.g.,* letters from Prof. Palladino and Roosevelt.

[311] *See* letter from CII.

[312] *See* letter from Chamber III.

[313] *See* letter from Maryland Bar.

[314] *Cf.* Rule 10b5–1 Adopting Release, *supra* note 18, at 80390 (reducing the disclosure window for tabular reporting of option awards pursuant to Item 402(x) of Regulation S–K (17 CFR 229.402(x)) to address concerns about the potential disclosure of many routine option awards that are less likely to have been affected by material nonpublic information).

[315] *See* letter from Chamber II.

[316] *See* letters from Prof. Edmans and Prof. Jackson, Dr. Hu, and Dr. Zytnick.

[317] *See* letter from DLA Piper.

[318] *See* letter from Cravath (''We also do not believe that a checkbox requirement is appropriate in the context of repurchase plans that are not publicly announced.'').

[319] *See* letters from Prof. Edmans and Prof. Jackson, Dr. Hu, and Dr. Zytnick.

[320] *See, e.g.,* letters from ABA Committee, BrilLiquid, Chamber II, Cravath, DLA Piper, Quest, and Simpson Thacher.

[321] *See, e.g.,* letters from ABA Committee, DLA Piper, and Simpson Thacher.

officer or director has purchased or sold equity securities that are the subject of an issuer's share repurchase plan or program around the time of the announcement. Thus, while the relevant data about domestic issuers are available from other sources, the checkbox allows investors to focus their efforts on transactions that are the most likely to benefit from further analysis. Absent the checkbox, identifying the subset of filings presenting executive equity transactions close in time to a repurchase announcement would require an investor to manually cross-check numerous filings. Moreover, this information is necessary for investors in FPIs because Exchange Act section 16(a) does not apply to them.

In this regard, in the Proposing Release, the Commission drew no distinction between domestic issuers and FPIs with respect to the importance of disclosure regarding insider purchases and sales within ten business days before or after the announcement of an issuer repurchase plan or program. However, in applying the same proposed regulatory text to Form 20–F as to Item 703 of Regulation S–K and Form N–CSR, which referenced Exchange Act section 16 reporting, the proposed checkbox amendments to Form 20–F, as drafted, would not have resulted in any additional disclosures about insiders at FPIs because FPI securities are exempt from Exchange Act section 16 reporting.[322] We appreciate the comments that noted this issue.[323]

We continue to believe this information is as important for investors in FPIs as it is for investors in other issuers. Consistent with the way in which executive officers and directors are referenced in Form 20–F, the checkbox disclosure requirement will now refer to purchases and sales by any ''director [and] member of senior management who would be identified pursuant to Item 1 of Form 20–F'' instead of referencing officers and directors subject to the reporting requirements under section 16(a) of the Exchange Act. In addition, we are moving the checkbox from Form 20–F to Form F–SR because we believe the checkbox is most useful in conjunction with the daily quantitative repurchase disclosures, which we moved to Form F–SR for FPIs that file on the FPI forms. Therefore, FPIs will be required to check the box if an director or member of senior management who would be identified in Form 20–F pursuant to Item 1 purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within four business days before or after the issuer's announcement of such repurchase plan or program. Because FPIs may elect to report using Forms 10–Q and 10–K, for those issuers the checkbox on those forms will include the Form 20–F reference to directors or senior management.

Other commenters opposed the proposed checkbox requirement because of the potential for misinterpretations or mischaracterizations,[324] including that it could give the incorrect impression that insiders were trading securities because of the announcement instead of for other reasons, such as long-established Rule 10b5–1(c) plans [325] or automatic sales to fund tax withholding on share vesting.[326] To remedy any misunderstandings, some commenters suggested that the Commission should make certain acknowledgments [327] or that the final amendments should allow issuers to include context for the checkbox to avoid any miscomprehension.[328] We did not revise the final amendments in response to these comments because, in addition to the required disclosure of factual information, an issuer may include additional disclosure to provide context to investors, and would be required to do so if such additional disclosures are material and necessary to prevent the required disclosures from being misleading.[329] In response to a commenter's suggestions,[330] we are adopting amendments to clarify certain aspects of the checkbox requirement. If an issuer has multiple classes of stock, each with its own repurchase plan, the issuer is required to check the box in its periodic report if, during that period, a covered officer or director purchases or sells shares or other units of the class of the issuer's equity securities that is the subject of any issuer share repurchase plan or program within four business days before or after the issuer's announcement of such repurchase plan or program. Additionally, the issuer is required to check the box in its periodic report if, during that period, it announced an increase of an existing share repurchase plan because the announcement constitutes a new repurchase plan for purposes of the requirement.

Finally, in response to a commenter's request for clarification,[331] we note that a domestic corporate issuer may rely on Forms 3, 4, and 5 filed with the Commission in determining if it should check the box provided that the reliance is reasonable. For example, an issuer would not be able to rely on those forms if the issuer knows or has reason to believe that a form was filed inappropriately or that a form should have been filed but was not. The amendments include a provision in new Item 601(b)(26) and new Item 14(a)(iii) in Form N–CSR that permits an issuer to rely on Forms 3, 4, and 5 in determining whether to check the box. Form F–SR contains an analogous provision for FPIs. Because the securities of FPIs are exempt from section 16,[332] however, Item 601(b)(26) and Form F–SR permit an FPI to rely on written representations from its directors and senior management provided that the reliance is reasonable.

C. Clarifying Amendments

1. Proposed Amendments

In the Proposing Release, the Commission proposed clarifying amendments to Item 703 of Regulation S–K, Form 20–F, and Form N–CSR to simplify application of the rules and remove unnecessary instructions. Specifically, the Commission proposed:

- To relocate guidance in the *Instruction 1 to paragraph (b)(1)* about information to appear in the table and disclosure to appear in a footnote to the table to paragraph (b)(1) to a new paragraph (c);
- To consistently refer to ''issuer'' instead of ''company''; [333]
- To remove Instructions 1 and 2 in the *Instructions to paragraphs (b)(3) and (b)(4)* and effectuate those instructions by adding ''aggregate'' to the total number of shares for all plans or programs publicly announced in paragraph (b)(3) in lieu of Instruction 1 and adding proposed paragraph (c) to replace Instruction 2; and
- To delete the *Instruction* to the affected requirements as they are clear that all purchases, including those that do not satisfy the conditions of Rule 10b–18, are included.

[322] *See* 17 CFR 240.3a12–3.

[323] *See, e.g.,* letters from CBA and Cravath.

[324] *See, e.g.,* letters from ABA Committee, Chamber II, Cravath, Quest, and Vistra.

[325] *See, e.g.,* letters from Cravath, DLA Piper, and PNC.

[326] *See* letter from PNC.

[327] *See, e.g.,* letters from Cravath, DLA Piper, PNC, and Quest.

[328] *See* letter from ABA Committee.

[329] *See* Rule 12b–20.

[330] *See* letter from ABA Committee.

[331] *See id.*

[332] *See* 17 CFR 240.3a12–3.

[333] In Form N–CSR only we would continue to refer to ''registrants'' rather than ''issuer'' or ''company'' for consistency with other provisions in Form N–CSR.

2. Comments on the Proposed Amendments

We did not receive any comments on these proposed clarifying amendments.

3. Final Amendments

We are adopting the clarifying amendments as proposed except that the reference to new proposed Item 703(c) is now new final Item 703(a).

D. New Item 408(d)

1. Proposed Amendments

In January 2022, the Commission proposed amendments concerning Rule 10b5–1 and insider trading.[334] Among other matters, the Commission proposed new disclosure requirements regarding the adoption, modification, and termination of Rule 10b5–1 plans and certain other similar trading arrangements by issuers, directors, and officers. Specifically, the Commission proposed new Item 408(a) of Regulation S–K to require certain issuers [335] to disclose:

- Whether, during its most recently completed fiscal quarter (the issuer's fourth fiscal quarter in the case of an annual report), the issuer adopted or terminated any contract, instruction, or written plan to purchase or sell its securities, whether or not intended to satisfy the affirmative defense conditions of Rule 10b5–1(c), and a description of the material terms of the contract, instruction or written plan, including:
  - The date of adoption or termination;
  - The duration of the contract, instruction, or written plan; and
  - The aggregate amount of securities to be sold or purchased pursuant to the contract, instruction, or written plan.

The Commission also proposed to require issuers to disclose similar information regarding the use of such trading arrangements by its directors and officers (as defined in 17 CFR 240.16a–1(f) (Rule 16a–1(f))).

Under the proposed rule, the disclosures would be required in Forms 10–Q and 10–K, as applicable, and tagged using Inline XBRL. Issuers would be required to provide this information if, during the quarterly period covered by the report, the issuer, or any director or officer who is required to file reports under Exchange Act section 16,[336] adopted or terminated a Rule 10b5–1 plan.

In December 2022,[337] the Commission adopted certain aspects of the Rule 10b5–1 Proposing Release, including the proposed disclosure requirements with respect to the use of pre-planned trading arrangements by an issuer's directors and officers. In response to commenters, the Commission revised the final rule to exclude disclosure of pricing information. At that time, the Commission did not adopt the proposal to require corresponding disclosure regarding the use of such trading arrangements by the issuer of the security. The Commission noted that, in light of the various comments received on this aspect of the proposal, further consideration of the potential application of the disclosure requirement for purchases of equity securities by the issuer was warranted.

2. Comments on the Proposed Amendments

Several commenters on the Rule 10b5–1 Proposing Release [338] supported, as a general matter, the proposed requirement for quarterly reporting of Rule 10b5–1(c) and non-Rule 10b5–1(c) trading arrangements because such disclosure could provide useful information to investors and the markets.[339] One commenter [340] asserted that the proposed disclosures would provide long-term shareholders with information that completes the partial picture about trading by insiders provided by 17 CFR 239.144 (''Form 144'') and Exchange Act section 16 reports.[341] Commenters were generally divided in their recommendations of what trading arrangement information should be disclosed.[342]

Other commenters did not support the proposed reporting requirements as a general matter.[343] A number of commenters expressed concern regarding the requirement for issuers to provide a description of the ''material terms'' of any Rule 10b5–1 trading arrangement [344] because issuers might interpret this to include specific details of a trading arrangement, such as pricing information.[345] Several commenters stated that the disclosure of pricing information and other details of a Rule 10b5–1 trading arrangement could expose issuers and their insiders to strategic trades.[346] A number of

---

[334] *See* Rule 10b5–1 Proposing Release, *supra* note 17.

[335] The proposed Item 408(a) of Regulation S–K disclosure would not apply to registered investment companies or asset-backed issuers (as defined in 17 CFR 229.1101). *See* 10b5–1 Adopting Release, *supra* note 18, at 80409 note 481.

[336] 15 U.S.C. 78p.

[337] *See* Rule 10b5–1 Adopting Release, *supra* note 18.

[338] Comments on the Rule 10b5–1 Proposing Release can be found at *https://www.sec.gov/comments/s7-20-21/s72021.htm.*

[339] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Anthony O'Reilly (Mar. 30, 2022); Better Markets (Apr. 1, 2022); Colorado Public Employees' Retirement Association (Mar. 29, 2022); Council of Institutional Investors (Mar. 24, 2022); DLA Piper (Apr. 1, 2022); International Corporate Governance Network (Mar. 31, 2022); North American Securities Administrators Association, Inc. (Apr. 1, 2022); and Simpson Thacher & Bartlett LLP (Mar. 31, 2022).

[340] *See* letter in response to the Rule 10b5–1 Proposing Release from Council of Institutional Investors (Mar. 24, 2022).

[341] Currently, with the exception of the Rule 10b5–1 representation included in Form 144, there are no disclosure obligations regarding the use of Rule 10b5–1 trading arrangements. *See* letter in response to the Rule 10b5–1 Proposing Release from American Federation of Labor and Congress of Industrial Organizations (Apr. 1, 2022).

[342] One commenter in response to the Rule 10b5–1 Proposing Release stated that the final rule should not require disclosure of the number of shares covered by a trading arrangement and the duration of the arrangement. *See* letter in response to the Rule 10b5–1 Proposing Release from Quest Diagnostics Inc. (Apr. 1, 2022). Some commenters recommended the required disclosures should be limited to the person adopting the plan, the date of adoption or termination, and duration. *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Fenwick & West (Mar. 31, 2022) and Shearman & Sterling LLP (Apr. 1, 2022). Other commenters in response to the Rule 10b5–1 Proposing Release recommended that the Commission not require disclosure of the termination of a trading arrangement because issuers may terminate a trading arrangement in advance of announcement of a significant corporate transaction, such as a merger, and that such plan terminations, if disclosed, could signal the market. *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Sullivan & Cromwell LLP (Apr. 1, 2022) and Securities Industry and Financial Markets Association, Kevin Carroll (Apr. 1, 2022).

[343] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from ACCO Brands Corp. (Mar. 31, 2022); Committee on Securities Law of the of the Business Law Section of the Maryland State Bar (Apr., 2022); International Bancshares Corporation (Apr. 1, 2022); National Association of Manufacturers (Apr. 1, 2022); National Venture Capital Association (Apr. 1, 2022); Society for Corporate Governance (Apr. 1, 2022); Sullivan & Cromwell LLP (Apr. 1, 2022); and Wilson, Sonsini, Goodrich & Rosati (Apr. 11, 2022).

[344] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Cleary, Gottlieb, Steen & Hamilton LLP (Mar. 23, 2022); Davis Polk & Wardwell LLP (Mar. 28, 2022); DLA Piper (Apr. 1, 2022); Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association (Apr. 29, 2022); FedEx Corporation (Apr. 1, 2022); Fenwick & West (Mar. 31, 2022); Kirkland & Ellis (Apr. 1, 2022); National Association of Manufacturers (Apr. 1, 2022); National Venture Capital Association (Apr. 1, 2022); Quest Diagnostics Inc. (Apr. 1, 2022); Securities Industry and Financial Markets Association, Joseph P. Corcoran (Apr. 1, 2022); Society for Corporate Governance (Apr. 1, 2022); Sullivan & Cromwell LLP (Apr. 1, 2022); and Wilson, Sonsini, Goodrich & Rosati (Apr. 11, 2022).

[345] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Cleary, Gottlieb, Steen & Hamilton LLP (Mar. 23, 2022); Davis Polk & Wardwell LLP (Mar. 28, 2022); DLA Piper (Apr. 1, 2022); Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association (Apr. 29, 2022); Fenwick & West (Mar. 31, 2022); Quest Diagnostics Inc. (Apr. 1, 2022); Securities Industry and Financial Markets Association, Joseph P. Corcoran (Apr. 1, 2022); Society for Corporate Governance (Apr. 1, 2022); and Wilson, Sonsini, Goodrich & Rosati (Apr. 11, 2022).

[346] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Davis Polk & Wardwell

commenters also recommended that the Commission not require disclosure regarding non-Rule-10b5–1 trading arrangements [347] because it would not provide valuable information to investors, the Commission, or other market participants.[348] Moreover, one commenter suggested the Commission exempt SRCs from the proposed disclosure requirement.[349]

A few commenters to the Rule 10b5–1 Proposing Release recommended that the disclosure requirements regarding issuer trading arrangements be considered in the context of this rulemaking.[350] One of these commenters suggested specifically that information relating to issuer use of Rule 10b5–1 plans could be moved to Item 703 to consolidate issuer reporting of share repurchases.[351]

3. Final Amendments

Consistent with the Rule 10b5–1 Adopting Release,[352] we are adopting new Item 408(d) of Regulation S–K, to better allow investors, the Commission, and other market participants to observe how issuers use Rule 10b5–1 plans. The information also will add important context for interpreting other disclosures, including the other disclosures we are adopting in this release, which should help investors value the issuer's shares and make more informed investment decisions. As noted above, in the Rule 10b5–1 Adopting Release, the Commission stated that further consideration of potential application of the disclosure requirements for purchases of equity securities by the issuer was warranted. Upon further consideration, and in response to issues raised by commenters, we believe that the Item 408(a) disclosure that was proposed for issuers in the Rule 10b5–1 Proposing Release will complement the disclosures concerning issuer repurchases that we are adopting in this release and allow investors to better evaluate issuer repurchases. Therefore, we are adopting new Item 408(d) in this release. New Item 408(d) substantially mirrors the proposed Item 408(a) of Regulation S–K disclosure requirement with respect to the issuer's adoption or termination of a contract, instruction, or written plan to purchase or sell its own securities that is intended to satisfy the affirmative defenses conditions of Rule 10b5–1(c).

In a change from the proposal, however, issuers will not be required to disclose information about the adoption or termination of any trading arrangement for the purchase or sale of securities of the issuer that meets the requirements of a non-Rule 10b5–1 trading arrangement as defined in Item 408(c). Because plans that would qualify for the affirmative defense under Rule 10b5–1 offer issuers enhanced protection from potential liability, in addition to other potential benefits, and are considerably more flexible for issuers than for insiders, we believe that issuers are incentivized to use trading arrangements that satisfy the conditions of Rule 10b5–1(c).[353] We also agree with commenters who said that information about the issuer's trading arrangements, other than those intended to qualify for the affirmative defense, has more limited value to investors or other market participants than information about such trading arrangements for insiders.[354] While issuers may not have reason to specifically disclose their use of a 10b5–1 plan, we understand that issuers generally have significant incentives to announce their repurchase plans, so that mandating disclosure of non-10b5–1 plans would not typically provide investors with significant new information.

New Item 408(d) will require an issuer to disclose whether, during its most recently completed fiscal quarter (the issuer's fourth fiscal quarter in the case of an annual report), the issuer adopted or terminated a contract, instruction, or written plan to purchase or sell its securities intended to satisfy the affirmative defense conditions of Rule 10b5–1(c). Issuers are also required to provide a description of the material terms of the contract, instruction, or written plan (other than terms with respect to the price at which the party executing the respective trading arrangement is authorized to trade), such as:

- The date on which the registrant adopted or terminated the Rule 10b5–1 trading arrangement;
- The duration of the Rule 10b5–1 trading arrangement; and
- The aggregate number of securities to be purchased or sold pursuant to the Rule 10b5–1 trading arrangement.

In response to comments and consistent with our approach to the recently adopted Item 408(a) of Regulation S–K,[355] we have revised the final rule to clarify that new Item 408(d) does not require disclosure of the price at which the party executing the trading arrangement is authorized to trade. We agree with commenters that disclosing pricing information could allow other persons to trade strategically in anticipation of planned trades.[356] As proposed, issuers will be required to disclose this information in their quarterly reports on Form 10–Q and Form 10–K (for the issuer's fourth fiscal quarter), and tag the information using Inline XBRL.[357] Moreover, while we are aware of the potential for a disproportionate impact on SRCs, we believe that exempting them from this disclosure requirement would deprive investors in those issuers of material information about the use of Rule 10b5–1 plans.[358]

LLP (Mar. 28, 2022); DLA Piper (Apr. 1, 2022); Fenwick & West (Mar. 31, 2022); National Venture Capital Association (Apr. 1, 2022); Securities Industry and Financial Markets Association, Joseph P. Corcoran (Apr. 1, 2022); Society for Corporate Governance (Apr. 1, 2022); and Wilson, Sonsini, Goodrich & Rosati (Apr. 11, 2022).

[347] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Cleary, Gottlieb, Steen & Hamilton LLP (Mar. 23, 2022); Shearman & Sterling LLP (Apr. 1, 2022); Simpson Thacher & Bartlett LLP (Mar. 31, 2022); and Sullivan & Cromwell LLP (Apr. 1, 2022).

[348] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Cleary, Gottlieb, Steen & Hamilton LLP (Mar. 23, 2022); Cravath, Swaine & Moore LLP (Mar. 28, 2022); and Simpson Thacher & Bartlett LLP (Mar. 31, 2022).

[349] *See* letter in response to the Rule 10b5–1 Proposing Release from Maryland Bar (claiming that SRCs and their insiders are less likely to engage in the kinds of trading in the securities of their companies that would cause concern, but these issuers could be disproportionately impacted by the reporting burden).

[350] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Cravath, Swaine & Moore LLP (Mar. 31, 2022) and Simpson Thacher & Bartlett LLP (Mar. 31, 2022).

[351] *See* letter in response to the Rule 10b5–1 Proposing Release from Simpson Thacher & Bartlett LLP (Mar. 31, 2022.

[352] *See* Rule 10b5–1 Adopting Release, *supra* note 18.

[353] The issuer of a security that relies on the recently amended Rule 10b5–1(c)(1) affirmative defense will not be subject to a cooling-off period, any limitation on the use of multiple overlapping plans, or any limitation on the use of single-trade plans. *See* Rule 10b5–1(c)(1)(ii)(B), (D), and (E).

[354] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Cleary, Gottlieb, Steen & Hamilton LLP (Mar. 23, 2022); Cravath, Swaine & Moore LLP (Mar. 28, 2022); and Simpson Thacher & Bartlett LLP (Mar. 31, 2022).

[355] *See* Rule 10b5–1 Adopting Release, *supra* note 18.

[356] *See, e.g.,* letters in response to the Rule 10b5–1 Proposing Release from Davis Polk & Wardwell LLP (Mar. 28, 2022); DLA Piper (Apr. 1, 2022); Fenwick & West (Mar. 31, 2022); National Venture Capital Association (Apr. 1, 2022); Securities Industry and Financial Markets Association, Joseph P. Corcoran (Apr. 1, 2022); Society for Corporate Governance (Apr. 1, 2022); and Wilson, Sonsini, Goodrich & Rosati (Apr. 11, 2022).

[357] The Commission did not propose to require FPIs to provide the Item 408(a) of Regulation S–K disclosure because they do not file quarterly reports, but it requested comment on whether such a requirement should apply to them. *See* Rule 10b5–1 Proposing Release, *supra* note 17, at Question # 26. No comments were received on this point.

[358] As proposed, *see* supra note 335, the final amendments do not apply to asset-backed securities issuers. Therefore, for clarity we are making a technical amendment to Instruction J of Form 10–K to allow asset-backed securities issuers to omit

Continued

Although there may be some overlap in the disclosure provided pursuant to new Item 408(d) and the disclosure provided pursuant to the amendment to Item 703 of Regulation S–K about an issuer's Rule 10b5–1(c) trading arrangements adopted during the prior fiscal quarter, new Item 408(d) would complement the new Item 703 disclosure. The disclosure requirement in Item 703 will be triggered only if an issuer had conducted a share repurchase in the prior fiscal quarter. In contrast, Item 408(d) will require disclosure if a Rule 10b5–1 plan was adopted or terminated, regardless of whether a share repurchase transaction pursuant to that plan actually occurred during the prior fiscal quarter that is covered in the Form 10–Q or Form 10–K (for the issuer's fourth fiscal quarter). To prevent potential duplicative disclosures, we are adding a note to Item 408(d)(1), which states that, if the disclosure provided pursuant to Item 703 contains disclosure that would satisfy the requirements of Item 408(d)(1), a cross-reference to that disclosure will satisfy the Item 408(d)(1) requirements.

E. Structured Data Requirement

1. Proposed Amendments

The Commission proposed to require issuers to tag the information disclosed pursuant to Item 703 of Regulation S–K, Item 16E of Form 20–F, Item 14 of Form N–CSR, and Form SR in a structured, machine-readable data language. Specifically, under the proposed rules issuers would be required to tag the disclosures in Inline XBRL in accordance with 17 CFR 232.405 (''Rule 405 of Regulation S–T'') and the EDGAR Filer Manual.[359] The proposed requirements would include detail tagging of quantitative amounts disclosed within the tabular disclosures in each of the aforementioned forms, as well as block text tagging and detail tagging of narrative and quantitative information disclosed in the footnotes to the tables required by Item 703 of Regulation S–K, Item 16E of Form 20–F, and Item 14 of Form N–CSR.

2. Comments on the Proposed Amendments

Most of the commenters who discussed requiring issuers to tag the information that would be disclosed in the proposed amendments supported the requirement because they asserted that it would improve the usability of the data.[360] One commenter noted its concern that the tagging requirement would be unnecessary and costly.[361] Another commenter objected to tagging the narrative disclosure and suggested limiting the tagging requirement to quantitative repurchase disclosures.[362] One commenter asked the Commission to exempt FPIs from this tagging requirement because their home country may not have a similar requirement, so tagging would constitute an additional burden on those issuers.[363]

3. Final Amendments

We are adopting, as proposed, final amendments to require issuers to tag the information disclosed pursuant to Items 601 and 703 of Regulation S–K, Item 16E of Form 20–F, Item 14 of Form N–CSR, and Form F–SR in a structured, machine-readable data language in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual. The final amendments require detail tagging of the quantitative amounts disclosed within the required tabular disclosures and block text tagging and detail tagging of required narrative and quantitative information. As certain commenters noted, requiring XBRL tagging in this manner would ''make the information provided most useful by making the data easier to review and compare electronically'' [364] and doing so ''would both enhance the utility of the information for investors and lower their costs to gather'' that information.[365]

We continue to believe that requiring Inline XBRL tagging of the repurchase disclosures is beneficial because it makes them more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. This requirement also enables automated extraction and analysis of granular data on actual repurchases, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison of repurchases across issuers and time periods, including comparing repurchases to information on executive's compensation.[366] At the same time, contrary to one commenter's assertion that the Inline XBRL requirements would impose significant unnecessary and significant compliance costs on issuers,[367] we do not expect the incremental compliance burden associated with tagging the additional information to be unduly burdensome, because issuers subject to the tagging requirements, including FPIs, are subject to similar Inline XBRL requirements in other Commission filings.[368] Moreover, as a result of the tagging requirements, investors can aggregate or manipulate the data to display monthly data that they are used to reviewing.

F. Compliance Dates

FPIs that file on the FPI forms will be required to comply with the new disclosure and tagging requirements in new Form F–SR beginning with the Form F–SR that covers the first full fiscal quarter that begins on or after April 1, 2024. The Form 20–F narrative disclosure that relates to the Form F–SR filings, which is required by Item 16E of that form, and the related tagging requirements will be required starting in the first Form 20–F filed after their first Form F–SR has been filed. Listed Closed-End Funds will be required to

Item 408 disclosures. Instruction J of Form 10–K includes a list of Item requirements that may be omitted for asset-backed securities issuers.

[359] This tagging requirement would be implemented by including cross-references to Rule 405 of Regulation S–T in each of the repurchase disclosure provisions, and by revising Rule 405(b) of Regulation S–T to include the proposed repurchase disclosures. Pursuant to 17 CFR 232.301 (''Rule 301 of Regulation S–T''), the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S–T specifically governs the scope and manner of disclosure tagging requirements for corporate issuers and investment companies, including the requirement in Rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

[360] *See, e.g.,* letters from Better Markets I, CalPERS, CFA Institute, CII, ICGN, NASAA, and XBRL US.

[361] *See* letter from NYC Bar.

[362] *See* letter from Cravath.

[363] *See* letter from VEUO (''FPIs may already be subject to home country requirements with respect to disclosure of share repurchases. Such home country requirements will almost certainly not require preparation of structured data with the same content and format as the Form SR Requirement. As a result, the structured data requirement would represent an additional and unnecessary administrative burden on FPIs'').

[364] *See* letter from CalPERS.

[365] *See* letter from CII.

[366] These considerations are generally consistent with objectives of the recently enacted Financial Data Transparency Act of 2022, which directs the establishment by the Commission and other financial regulators of data standards for collections of information, including with respect to periodic and current reports required to be filed or furnished under Exchange Act sections 13 and 15(d). Such data standards would need to meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. *See* James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, tit. LVIII, 136 Stat. 2395, 3421–39 (2022).

[367] *See* letter from NYC Bar.

[368] Inline XBRL requirements for Listed Closed-End Funds and business development companies took effect beginning August 1, 2022 (for seasoned issuers) and February 1, 2023 (for all other issuers).

comply with the new disclosure and tagging requirements in their Exchange Act periodic reports beginning with the Form N–CSR that covers the first six-month period that begins on or after January 1, 2024. All other issuers will be required to comply with the new disclosure and tagging requirements in their Exchange Act periodic reports on Forms 10–Q and 10–K (for their fourth fiscal quarter) beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023.[369]

IV. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application. Pursuant to the Congressional Review Act,[370] the Office of Information and Regulatory Affairs has designated these amendments a ''major rule,'' as defined by 5 U.S.C. 804(2).

V. Economic Analysis

We are mindful of the costs imposed by, and the benefits derived from, our rules. Section 3(f) of the Exchange Act [371] and section 2(c) of the Investment Company Act of 1940 (''Investment Company Act'') [372] require us, when engaging in rulemaking, to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, and to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, 15 U.S.C. 78w(a)(2) (section 23(a)(2) of the Exchange Act) requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[373]

We have considered the economic effects of the amendments, including their effects on competition, efficiency, and capital formation. Many of the effects discussed below cannot be quantified. Consequently, while we have, wherever possible, attempted to quantify the economic effects expected from these amendments, much of the discussion remains qualitative in nature. Where we are unable to quantify the economic effects of the final amendments, we provide a qualitative assessment of the potential effects.

As discussed in greater detail in Sections I and III above, the final amendments include a requirement to disclose historical daily repurchase activity in an exhibit to Forms 10–K and 10–Q (for corporate issuers that report on domestic forms), on Form N–CSR (for Listed Closed-End Funds), and on new quarterly Form F–SR for FPIs reporting on the FPI forms (due to be filed within 45 days after the end of the respective quarter). This disclosure, which is required to be structured using Inline XBRL, includes the number of shares repurchased by an issuer, the average price per share paid, total number of shares purchased as part of publicly announced plans or programs, the maximum number (or approximate dollar value) of shares that may yet be repurchased under the publicly announced plans or programs, number of shares repurchased on the open market, the number of shares intended to qualify for the Rule 10b–18 non-exclusive safe harbor, and the number of shares repurchased pursuant to a Rule 10b5–1 plan. This disclosure will be required to be filed, rather than furnished.

The final amendments also require additional disclosure on Forms 10–Q, 10–K, 20–F, and N–CSR about the issuer's repurchase program and practices, including the objectives or rationales for the share repurchases, the process or criteria used to determine the amount of repurchases, and whether purchases were made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c), or intended to qualify for the Rule 10b–18 non-exclusive safe harbor. In addition, the final amendments eliminate the requirement in Item 703 of Regulation S–K that issuers disclose their monthly repurchase data in their periodic reports. Further, the final amendments require disclosure of any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restrictions on such transactions. Further, the amendments also require an issuer to indicate whether certain officers or directors purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within four business days before or after the issuer's public announcement of such repurchase plan or program. Finally, the amendments add new quarterly disclosure in periodic reports on Forms 10–K and 10–Q related to an issuer's adoption and termination of certain trading arrangements. The final amendments require the additional disclosures to be structured using Inline XBRL.

A. Baseline and Affected Parties

1. Affected Parties

Repurchase disclosures are currently required by Item 703 of Regulation S–K (on Forms 10–Q and 10–K), Item 16E of Form 20–F, and Item 14 of Form N–CSR (for Listed Closed-End Funds). The disclosure is required with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser'' of shares or other units of any class of the issuer's equity securities that is registered pursuant to section 12 of the Exchange Act. Based on staff analysis of EDGAR filings for calendar year 2021, the amendments will affect the same categories of issuers, including approximately 6,700 issuers with a class of securities registered under section 12 that file on Forms 10–Q and 10–K and approximately 800 issuers with a class of securities registered under section 12 that file on Form 20–F.[374] In addition, based on staff analysis of Morningstar Direct data for 2021, approximately 500 Listed Closed-End Funds are expected to be affected by the amendments to Form N–CSR. We lack the data to estimate the number of affected ''affiliated purchasers.''

Among the issuers described above, issuers that recently engaged in repurchases are most likely to be affected by the final amendments.[375]

[369] For example, the compliance dates for a registrant with a December 31, 2023 fiscal year end is as follows: (1) Issuers that file periodic reports on Forms 10–Q and 10–K will be required to begin complying with the new disclosure and tagging requirements in their Form 10–K for the fiscal year ending on December 31, 2023 as it relates to repurchases made during the quarter ending December 31, 2023; (2) FPIs that report using Form 20–F will be required to begin filing new Form F–SR for the quarter ending June 30, 2024; and (3) Listed Closed-End Funds will be required to begin complying with the new disclosure and tagging requirements in Form N–CSR for the six-month period ending on June 30, 2024.

[370] 5 U.S.C. 801 *et seq.*

[371] 15 U.S.C. 78c(f).

[372] 15 U.S.C. 80a–2(c).

[373] 15 U.S.C. 78w(a)(2).

[374] Registered investment companies (but not business development companies) and asset-backed securities issuers are excluded from the count of operating companies cited above. We refer to FPIs that file on Form 20–F as FPIs in this section for brevity, unless specified otherwise. Only FPIs that file on Form 20–F are subject to the amendments. MJDS filers that file on Form 40–F are not subject to the amendments. *See* MJDS Release, *supra* note 219.

[375] Issuers with no repurchases today could be affected by the amendments to the extent they were

Continued

Based on data from Compustat and EDGAR filings for fiscal years ending between January 1, 2021, and December 31, 2021, we estimate that approximately 3,600 corporate issuers that conducted repurchases would be more directly affected by the amendments (among them, approximately 300 Form 20–F filers).[376] In addition, based on staff analysis of Form N–CEN filings for 2021, approximately 100 Listed Closed-End Funds conducted repurchases.[377] Based on these estimates, most of the affected issuers are corporate issuers that file periodic reports on domestic forms.

New Item 408(d) will affect issuers that undertake share repurchases through Rule 10b5–1 plans. Data on issuers' use of such plans are very limited. Some issuers voluntarily disclose their use of Rule 10b5–1 plans to carry out stock repurchases on Form 8–K or in periodic reports. Such voluntary reporting is likely to underestimate the number of affected issuers. Nevertheless, in the current disclosure regime, it is the most direct source of information on the prevalence of Rule 10b5–1 plan repurchases. One study examining different repurchase methods identified ''at least 200 announcements of repurchases using Rule 10b5–1 [plans] per year from 2011 to 2014'' and found that ''[In 2014] 29% [of repurchase announcements] included a 10b5–1 plan.'' [378] Based on a textual search of calendar year 2021 filings, we estimate that approximately 210 issuers (excluding asset-backed issuers) disclosed share repurchase programs executed under a Rule 10b5–1 plan.[379]

Another, indirect approach to estimating the number of affected issuers involves extrapolating the number of companies conducting repurchases under Rule 10b5–1 plans in a given year from a combination of the incidence of Rule 10b5–1 plan use among voluntarily announced repurchases (estimated at 29 percent as previously noted [380]) and the overall number of companies conducting repurchases based on their financial statements.[381] Based on data from Compustat and EDGAR filings for fiscal years ending between January 1, 2021, and December 31, 2021, we estimate that approximately 3,600 operating companies (excluding asset-backed issuers) conducted repurchases, yielding an estimate of approximately 1,000 companies affected by the Item 408(d) amendments.[382] Item 408(d) does not apply to Listed Closed-End Funds.

Investors will also be affected by the final amendments to the extent that they benefit from the additional insight into an issuer's repurchase activity (and bear any costs of analyzing the additional disclosure). Financial intermediaries that execute repurchases at the issuer's instruction will also be affected by these amendments to the extent that they prepare the information necessary for an issuer's responsive disclosure, and indirectly, to the extent that the amendments affect the incidence of repurchases and thus demand for financial intermediaries' services in connection with executing repurchases. The amendments will also impact officers and directors to the extent that issuers establish policies or procedures imposing restrictions on transactions during a repurchase program. Officers and directors (particularly, in the case of FPIs whose senior management and directors are not subject to section 16 reporting obligations) may also be affected by having to provide issuers with information about their trades. We lack data to assess how many of these parties will be affected.

2. Baseline

Many studies, spanning decades, examine the motivation for corporate payout decisions, repurchases among them.[383] Based on data for 2021, share repurchases of U.S.-listed companies

planning future repurchases and such plans were affected by the costs of the additional disclosure requirements.

[376] As a caveat, a complete estimate of the number of affected issuers is limited by data coverage. A source of data commonly used in existing studies, Standard & Poor's Compustat, has limited coverage of small and unlisted issuers and FPIs. Therefore, we supplement Compustat Fundamentals Annual data (version retrieved June 27, 2022) with structured data from financial statement disclosures in EDGAR filings (retrieved June 27, 2022), with the caveat that variation in filer use of tags to characterize their repurchases may result in some data noise.

[377] Based upon a staff review, we expect approximately 20 percent of Listed Closed-End Funds to be affected by the amendments to engage in share repurchases, as compared to approximately half of corporate issuers.

[378] *See* Bonaimé *et al.* (2020), *supra* note 58.

[379] The estimate is based on a textual search of calendar year 2021 filings of Forms 10–K, 10–Q, 8–K, as well as amendments and exhibits thereto in Intelligize. The estimate is based on a textual search using keywords ''10b5–1 repurchases'' or a combination of keywords ''repurchase plan'' and ''10b5–1'' (the approach used in the Proposing Release estimate). Due to a lack of standardized presentation and the unstructured (*i.e.,* non-machine-readable) nature of the disclosure, these estimates are approximate and may be over- or under-inclusive. Asset-backed issuers are not subject to new Item 408(d). *See supra* note 358.

[380] *See* Bonaimé *et al.* (2020), *supra* note 58.

[381] Using the number of issuers that announce repurchases in a given year would underestimate the number significantly because issuers may continue to implement a previously announced repurchase program over multiple years.

[382] As a caveat, a complete estimate of the number of affected issuers is limited by data coverage. A source of data commonly used in existing studies, Standard & Poor's Compustat, has limited coverage of small and unlisted registrants and foreign private issuers. Therefore, we supplemented Standard & Poor's Compustat Fundamentals Annual data (version retrieved June 27, 2022) with structured data from financial statement disclosures in EDGAR filings (retrieved June 27, 2022), with the caveat that variation in filer use of tags to characterize their repurchases may result in some data noise. 29 percent × 3600 = 1,044 ~ 1,000.

[383] For a more detailed discussion of the data and research on repurchases and other payouts, *see* 2020 Staff Study; and Farre-Mensa *et al.* (2014), *supra* note 28. The focus of the 2020 Staff Study was determined by the directive of Congress in its Joint Explanatory Statement accompanying the Financial Services and General Government Appropriations Act, which directed the staff to study the recent growth of negative net equity issuances with respect to non-financial issuers, including the history and effects of those issuers repurchasing their own securities, and the effects of those repurchases on investment, corporate leverage, and economic growth. The study provided data and statistics on share repurchases across different types of companies and time periods, as well as an extensive discussion of related evidence in existing research, which offers insight into the existing market baseline. For example, the study discusses the evidence on the favorable market reaction to repurchase announcements. Among its findings, the study notes that ''[r]epurchases are an increasingly common way firms distribute cash to shareholders. There are several possible reasons firms conduct repurchases; some support efficient investment and for some the connection is less clear. The analysis below suggests that firms are more likely to conduct repurchases when they have excess cash and when they would benefit from increased reliance on debt financing.'' The study further notes that ''the data is consistent with firms using repurchases to maintain optimal levels of cash holdings and to minimize their cost of capital'' and that ''reasons for repurchases where the connection to efficient investment is less clear are unlikely to motivate the majority of repurchases since stock prices typically increase in response to repurchase announcements, suggesting that, at least on average, repurchases are viewed as having a positive effect on firm value . . . [and] that the theories inconsistent with firm value maximization cannot account for the majority of repurchase activity.'' In discussing one of the criticisms of share repurchases, the study notes ''that insider sales may be timed to coincide with repurchase announcements. If insiders time sales to coincide with repurchase announcements and any resulting increase in stock price, executives may be incentivized to recommend repurchase programs to further their own gain.'' However, the study notes, it is ''difficult to ascertain the motivations underlying insider sales.'' *See also infra* note 390 and accompanying text.

amounted to approximately $950 billion.[384] Aggregate repurchases have grown significantly over the past four decades, but the increase relative to aggregate market capitalization has been significantly more modest due to the accompanying growth in aggregate market capitalization; in addition, aggregate repurchases, both in absolute terms and relative to aggregate market capitalization, have exhibited considerable cyclical fluctuations (increasing during economic booms and declining during recessions).[385] As noted by a commenter, the growth in repurchases was considerably smaller when adjusted for equity issuance than when considered in gross terms.[386] Dividends fluctuate less than repurchases, consistent with dividends being viewed by the market as a commitment to regularly return cash to shareholders.[387] As a result, managers may endeavor to keep dividend payments stable, mainly avoiding dividend cuts, justifying the market's interpretation.[388] Firms that exclusively pay dividends are increasingly rare whereas the proportion of firms that regularly conduct repurchases has increased over time, consistent with repurchases being a partial substitute for dividends.[389] As a caveat, existing studies referenced in this release, including the 2020 Staff Study, are necessarily constrained by existing disclosure limitations.[390]

A recent change that followed the issuance of the Proposing Release and that is likely to affect share repurchases is the enactment of the one percent excise tax on share repurchases of covered corporations under the Inflation Reduction Act, which took effect January 1, 2023.[391] To the extent that the new excise tax causes some issuers to reduce the frequency and/or size of their repurchases or choose to declare a dividend instead, the number of issuers subject to the amendments will decrease. Among issuers that continue to engage in share repurchases after the effectiveness of the new excise tax, and that therefore remain subject to the amendments, some may decrease the level of share repurchases.[392] Compared to the use of gross share repurchases, the application of the excise tax to repurchases net of equity issuance, which is clarified in recently issued Treasury guidance,[393] is likely to narrow the scope of the potential excise tax effect.[394] However, it is difficult to forecast how many filers that engaged in repurchases in the past will cease or reduce repurchases after the effectiveness of the excise tax due to several limitations, including confounding macroeconomic and regulatory factors, a lack of a directly comparable prior regulatory intervention, uncertainty about how companies will weigh investors' personal tax preferences against the corporate excise tax on repurchases, and the fact that other company-specific factors, besides the excise tax on buybacks, affect payout decisions.[395]

As stated in Section I above, we have considered the potential effects of the excise tax and the additional comments received. While postponing the analysis of the amendments for one or two years following the effectiveness of the Inflation Reduction Act would provide additional repurchase data for the post-excise tax period, we do not believe that such data is likely to yield meaningful changes to the analysis of the economic effects of the amendments for two reasons. First, to the extent that the

[384] Based on staff analysis of Standard & Poor's Compustat Fundamentals Annual data (version retrieved June 27, 2022) related to share repurchases conducted during fiscal years ending between January 1, 2021 and December 31, 2021 by issuers listed on U.S. exchanges (including financial industry issuers and U.S.-listed issuers incorporated outside the U.S.). This estimate includes financial industry issuers as well as U.S.-listed foreign-incorporated issuers with Compustat data. As of this writing, we lack complete data for fiscal years ending during January 1–December 31, 2022.

[385] *See, e.g.,* Campello, M., Graham, J., & Harvey, C., *The Real Effects of Financial Constraints: Evidence from a Financial Crisis,* 97 J. Fin. Econ. 470 (2010); Dittmar, A. & Dittmar, R., *The Timing of Financing Decisions: An Examination of the Correlation in Financing Waves,* 90 J. Fin. Econ. 59 (2008) (''Dittmar and Dittmar (2008)''); Floyd, E., Li, N., & Skinner, D., *Payout Policy through the Financial Crisis: The Growth of Repurchases and the Resilience of Dividends,* 118 J. Fin. Econ. 299 (2015). *See also* 2020 Staff Study (observing that growth in aggregate repurchases has fluctuated over the past several decades, as demonstrated by a large decline and rebound following the financial crisis, and also observing that share repurchases net of equity issuances as a percentage of aggregate market capitalization of public companies have remained relatively stable over the past decade, within the longer trend of modest percentage growth over the last forty years). *See also* letter from Chamber V (discussing cyclicality and seasonality of repurchases).

[386] *See* letters from Chamber II and Profs. Lewis and White. The commenter cites findings by Fried: Fried, J.M., & Wang, C.C. *Are Buybacks Really Shortchanging Investment?* Harv. Bus. Rev., 88–95, *https://hbr.org/2018/03/are-buybacks-really-shortchanging-investment* (2018, March–April); Fried, J. *https://hbr.org/2018/03/are-buybacks-really-shortchanging-investment;* Fried, J.M., & Wang, C.C. *Short-Termism and Capital Flows,* 8 Rev. Corp. Fin. Stud. 207 (2019); and Fried, J.M., & Wang, C.C. *Short-Termism, Shareholder Payouts and Investment in the EU,* 27 Eur. Fin. Mgmt. 389 (2021). As the commenter also notes, Asness, Hazelkorn, and Richardson (2018) ''present empirical evidence that repurchases do not mechanically grow earnings or reduce investment.'' *See* Asness, C., Hazelkorn, T., & Richardson, S. *Buyback Derangement Syndrome,* 44 J. Portfolio Mgmt. 50 (2018). As the commenter further notes, ''Edmans (2017, 2020) also argues that issuers do not systematically misuse cash for repurchases.'' *See* Edmans, A. (2017, September 15). *The Case for Stock Buybacks,* Harv. Bus. Rev.; and Edmans, A. (2020). *Grow the Pie: How Great Companies Deliver Both Purpose and Profit.* Cambridge University Press.

[387] *See, e.g.,* Brealey, R., Myers, S., & Allen, F., *Principles of Corporate Finance* (12th ed. 2017). Issuers generally announce dividend policies, and markets react strongly to increases and reductions in dividends. *See, e.g.,* Healy, P. & Palepu, K., *Earnings Information Conveyed by Dividend Initiations and Omissions,* 21 J. Fin. Econ. 149 (1988). Market reactions to initiations and omissions are even more pronounced. *See* Michaely, R., Thaler, R., & Womack, K., *Price Reactions to Dividend Initiations and Omissions: Overreaction or Drift*? 50 J. Fin. 573 (1995); Lee, B.S. & Mauck, N., *Dividend Initiations, Increases and Idiosyncratic Volatility,* 40 J. Corp. Fin. 47 (2016). These studies indicate that decreases in buybacks do not elicit the same negative market reaction as dividend decreases.

[388] For example, one survey of 384 chief financial officers (''CFOs'') and executives suggests that the ability to avoid reducing dividends was the top consideration of managers when determining dividend policy. *See* Brav, A., Graham, J., Harvey, C., & Michaely, R., *Payout Policy in the 21st Century,* 77 J. Fin. Econ. 483 (2005) (''Brav *et al.* (2005)'').

[389] *See* 2020 Staff Study. The partial substitution between dividends and repurchases has also been documented in academic studies. *See, e.g.,* Skinner, D., *The Evolving Relation between Earnings, Dividends and Stock Repurchases,* 87 J. Fin. Econ. 582 (2008); Grullon, G. & Michaely, R., *Dividends, Share Repurchases, and the Substitution Hypothesis,* 57 J. Fin. 1649 (2002).

[390] The low frequency and the unstructured nature of existing Item 703 data on repurchase activity limit the ability of existing studies to gauge the extent of information asymmetry between issuers and investors associated with the execution of repurchase programs and its economic effects. Existing disclosure has also limited the ability of existing studies to draw a causal connection between managerial incentives and day-to-day execution of repurchase programs as well as quantify its economic effects. Further, while public attention has focused on the aggregate trends in repurchases, the attribution of aggregate trends to specific drivers of repurchases is complicated due to the presence of confounding factors that cannot be readily isolated in existing data. The discussed data limitations should be considered in evaluating existing studies of the motivations of repurchases. Additional caveats, where applicable, are referenced in the discussion of individual strands of research and evidence on repurchases below.

[391] *See* Public Law 117–169, 136 Stat. 1818 (2022). *See also* Notice 2023–2 Initial Guidance Regarding the Application of the Excise Tax on Repurchases of Corporate Stock under Section 4501 of the Internal Revenue Code, *available at https://www.irs.gov/pub/irs-drop/n-23-02.pdf* (''Excise Tax Guidance'').

[392] *See* Staff Excise Tax Memorandum, at 5.

[393] *See* Excise Tax Guidance.

[394] *See* Staff Excise Tax Memorandum, at p. 3 and note 11. *See also* 2020 Staff Study.

[395] *See* Staff Excise Tax Memorandum, at 4, 8. *See also* letter from Chamber V (stating that the effects of the excise tax will likely be unknown for at least a year after it becomes effective due to the seasonality in stock repurchases and issuances, and also noting the possibility of a global recession in 2023 that may affect the quantification of the impact of the excise tax on repurchases due to the cyclicality of share repurchases and issuances, concluding that ''a period of at least two years is necessary to properly gather data and quantify the impact of the excise tax on share repurchase activity.'').

excise tax results in a decline in repurchase activity, both in terms of the number of repurchasing issuers and the level of repurchases by the issuers that continue to repurchase, those effects of a potential change in the market baseline on the economic analysis of the proposed amendments have been considered above and in the Staff Memorandum. We do not believe that a decline in repurchase activity due to the excise tax, should one occur, will have an effect on this economic analysis that is meaningfully different from a decline in repurchase activity for other reasons, such as a change in market conditions. Generally, any significant trends of issuers discontinuing their repurchase programs as a result of the excise tax will result in a decrease in the aggregate costs of the rule. We document the evolution of share repurchases, including the cyclicality in share repurchases, in the 2020 Staff Study. Furthermore, whether the aggregate level of share repurchases decreases or remains largely unaffected, we continue to believe that the underlying rationale for the rule—informing investors in a more comprehensive fashion about the repurchase decisions of issuers that do continue to conduct repurchases—remains applicable. Moreover, when corporate repurchase decisions carry a new potential cost to shareholder value, in the form of an excise tax, informing shareholders about the reasoning behind, the structure of, and the incremental nature of, an issuer's repurchase decisions may be even more important.

Second, more importantly, due to the significant problem of aggregate confounding factors, obtaining even two additional years of data after the effectiveness of the excise tax is unlikely to enable us to identify the incremental contribution of the excise tax. Changes in macroeconomic and regulatory factors could confound the interpretation of any change in the level of repurchase activity. For example, it is virtually impossible to disentangle the role of other aggregate factors that would have a similar direction of the effect on the level of repurchase activity, such as the changes in macroeconomic conditions and monetary policy, from the effects of widespread application of a new tax on corporate repurchases. For example, a deterioration in macroeconomic conditions may also lead issuers to conserve cash and reduce or eliminate share repurchases (the much more flexible form of shareholder payouts, compared to cash dividends). As another example, contemporaneous increases in interest rates could make debt relatively less attractive, leading to a reduction in debt-financed equity repurchases that would be unrelated to the excise tax change. While the effects of the excise tax are not expected to change the direction and the qualitative nature of the economic effects of the amendments discussed in Sections V.B. and V.C. with respect to any particular share repurchase that takes place, to the extent that there is a reduction in the total number of issuers that undertake share repurchases due to the excise tax, the aggregate economic effects of the amendments will decrease.[396] In addition, for issuers that continue repurchases but decrease their level and thus remain subject to the amendments, we expect the portion of costs and benefits that scales with the level of repurchases to decrease.[397]

Information about past repurchases is valuable to investors. Several empirical studies show that on average share prices increase after share repurchases.[398] However, some studies do not find this result.[399] The differences in the conclusions may be due to differences in empirical methodology and sample period.[400] Because these studies utilize presently available monthly data, they may suffer from a lack of statistical power. Studies focused on share repurchase announcements also find positive returns.[401] Researchers have identified several channels through which a repurchase could increase the share price. One of the earliest strands of research on share repurchases concludes that issuer share repurchases are related to the undervaluation of its securities.[402] Corporate insiders likely have a superior understanding of their business and industry. Academic research suggests that managers can use increases in distributions, such as new repurchase programs, to signal their view that the stock is undervalued and is expected to increase in the future.[403] Issuers may also undertake repurchases in an effort to provide price support by supplying liquidity when selling pressure is high; thus, share prices would be lower during an issuer's repurchases and higher afterwards.[404] Thus, more comprehensive and disaggregated, granular information

[396] *See* Staff Excise Tax Memorandum, at 9–12.

[397] *See* Staff Excise Tax Memorandum, at 9–12.

[398] *See, e.g.,* Dittmar, A. & Field, L.C., *Can Managers Time the Market? Evidence Using Repurchase Price Data,* 115 J. Fin. Econ. 261 (2015) (''Dittmar and Field (2015)''); Ben-Rephael, A., Oded, J., & Wohl, A., *Do Firms Buy Their Stock at Bargain Prices? Evidence From Actual Stock Repurchase Disclosures,* 18 Rev. Fin. 1299 (2014) (''Ben-Rephael *et al.* (2014)''); Chan, K., Ikenberry, D., & Lee, I., *Do Managers Time the Market? Evidence from Open-Market Share Repurchases,* 31 J. Banking & Fin. 2673 (2007) (''Chan *et al.* (2007)''); Cook, D., Krigman, L., & Leach, J.C., *On the Timing and Execution of Open Market Repurchases,* 17 Rev. Fin. Stud. 463 (2004) (''Cook *et al.* (2004)'') (finding that larger firms in the sample perform better than smaller firms in timing the price at which repurchases are executed); Bargeron, L. & Bonaimé, A.A., *Why Do Firms Disagree with Short Sellers? Managerial Myopia versus Private Information,* 55 J. Fin. & Quantitative Analysis 2431 (2020) (''Bargeron and Bonaimé (2020)'') (concluding that managers of firms facing short selling pressure increase repurchases as a result of managers' private information advantage over short sellers). Horizons and methodologies employed in these studies differ. For example, Dittmar and Field (2015) find that infrequent repurchasers experience positive price trends for one, three, and six months after months of actual repurchases (but the result is not observed for frequent repurchasers); Ben-Rephael *et al.* (2014) find a positive one-month drift following the disclosure of actual repurchases; and Chan *et al.* (2007) show positive abnormal returns after repurchase program announcements over up to a four-year horizon.

[399] *See, e.g.,* Obernberger, S., *The Timing of Actual Share Repurchases,* Working paper (2014) (concluding that contrarian trading rather than market timing ability explains the observed relation between returns and actual share repurchases); Dittmar and Dittmar (2008); Bonaimé, A.A., Hankins, K., & Jordan, B., *The Cost of Financial Flexibility: Evidence From Share Repurchases,* 38 J. Corp. Fin. 345 (2016) (''Bonaimé *et al.* (2016)'') (finding that ''actual repurchase investments underperform hypothetical investments that mechanically smooth repurchase dollars through time by approximately two percentage points per year on average'').

[400] As a general caveat, any working papers cited here have generally not undergone peer review and may be subject to revision.

[401] *See, e.g.,* Evgeniou, T., Junqué de Fortuny, E., Nassuphis, N., & Vermaelen, T., *Volatility and the Buyback Anomaly,* 49 J. Corp. Fin. 32 (2018); Bargeron, L., Kulchania, M., & Thomas, S., *The Timing and Source of Long-Run Returns Following Repurchases,* 52 J. Fin. & Quantitative Analysis 491 (2017); Peyer, U., & Vermaelen, T., *The Nature And Persistence of Buyback Anomalies,* 22 Rev. Fin. Stud. 1693 (2009). *But see* Fu, F. & Huang, S., *The Persistence of Long-Run Abnormal Returns Following Stock Repurchases and Offerings,* 62 Mgmt. Sci. 964 (2016) (documenting disappearance of long-run, post-repurchase abnormal returns during 2003–2012).

[402] *See* the survey of the literature on share repurchases in Farre-Mensa *et al.* (2014).

[403] For analysis of signaling with repurchases, *see, e.g.,* Vermaelen, T., *Common Stock Repurchases and Market Signaling: An Empirical Study,* 9 J. Fin. Econ. 139 (1981); Vermaelen, T., *Repurchase Tender Offers, Signaling, and Managerial Incentives,* 19 J. Fin. & Quantitative Analysis 163 (1984); Constantinides, G. & Grundy, B., *Optimal Investment with Stock Repurchase and Financing as Signals,* 2 Rev. Fin. Stud. 445 (1989); Hausch, D. & Seward, J., *Signaling with Dividends and Share Repurchases: A Choice Between Deterministic and Stochastic Cash Disbursement,* 6 Rev. Fin. Stud. 121 (1993); McNally, W., *Open Market Stock Repurchase Signaling,* 28 Fin. Mgmt. 55 (1999). In some studies, authors find that repurchases send a stronger signal than dividends. *See, e.g.,* Ofer, A. & Thakor, A., *A Theory of Stock Price Responses to Alternative Corporate Cash Disbursement Methods: Stock Repurchases and Dividends,* 42 J. Fin. 365 (1987); Persons, J., *Heterogeneous Shareholders and Signaling with Share Repurchases,* 3 J. Corp. Fin. 221 (1997).

[404] *See, e.g.,* Liu, H. & Swanson, E., *Is Price Support a Motive for Increasing Share Repurchases?,* 38 J. Corp. Fin. 77 (2016) (''Liu and Swanson (2016)'').

about recent repurchases and prices of such repurchases should be useful to investors in inferring the management's evolving beliefs about the company's underlying value and, in conjunction with other disclosures, improving price discovery.

Comprehensive disclosure of recent actual repurchases should thus contain valuable information about the issuer's beliefs about the fundamental valuation of the company that is not revealed to the market otherwise. Conversely, a lack of comprehensive disclosure contributes to information asymmetries between investors and issuers. The additional quantitative and qualitative disclosures we are adopting are further expected to enhance the information about share repurchases, providing clearer insights into how and why the issuers undertake repurchases and the extent to which they are related to temporary undervaluation of issuer shares, temporary cash windfalls that cannot be deployed to positive-net present value (NPV) investment projects, or other objectives. The benefit of the information contained in disclosures of recent repurchase activity is expected to be lower to the extent that large issuer repurchases already have a price impact, resulting in price discovery and indirect revelation of information to the market, even in the absence of additional disclosure.[405] Nevertheless, to the extent that an issuer's repurchases incorporate insiders' future outlook on the firm, they could be informative to investors (complementing the information in Form 4 filings).

The existing disclosure of share repurchases aggregated on a monthly basis does not allow investors to evaluate the specific timing of actual repurchases or repurchase patterns or changes in conjunction with other public information and point-in-time disclosures made by the issuer and, if applicable, its executives.

Various studies address motivations behind corporate payouts and the choice of the form of payout (repurchases or dividends).[406] As demonstrated by prior research, in a number of instances, the use of repurchases can be efficient and aligned with shareholder value maximization and benefit investors.[407] Sometimes issuers that have excess cash do not have profitable investment opportunities.[408] In such instances, distributing the cash through dividends or repurchases can alleviate concerns that managers will spend the cash in sub-optimal ways, such as empire-building acquisitions.[409] Survey evidence supports this theory, with the second most cited reason for conducting a repurchase being the ''lack of good investment opportunities.'' [410] By returning excess cash to shareholders, repurchases free up the capital that can then be invested in other businesses that lack the capital to pursue value-creating investment opportunities. Stock price reactions to announcements of new repurchase programs are higher for cash-rich issuers, which may be consistent with the creation of value when managers remove their discretion over how to invest excess cash and provide that cash to investors to redeploy as they see fit.[411]

Additionally, issuers may choose repurchases if the excess free cash flow stems from a one-time windfall, or if they value financial flexibility and wish to avoid a costly, long-term commitment to higher dividends.[412] For instance, firms that favor repurchases tend to have more volatile cash flows than dividend-paying firms.[413] Issuers with excess free cash flow may also choose repurchases over dividends as the method of payout because repurchases are more tax-efficient for shareholders.[414] Finally, repurchases may also be used to adjust an issuer's leverage upward, as part of adjustment towards the target capital structure, or as part of a market timing approach to capital structure.[415]

Some commentators and studies have noted that opportunistic insider behavior and agency conflicts, rather than firm value maximization, can motivate repurchases. In particular, repurchases can serve as a form of real earnings management (through decreasing the denominator of EPS) and thus be subject to short-term earnings management objectives of an executive seeking to meet or beat consensus forecasts.[416] CFO survey responses indicate that increasing EPS is an important factor affecting share

---

[405] *See also* letters from Chamber II and Profs. Lewis and White (noting that ''the information contained in order flow may subsume much of the information that would be contained in more frequent disclosure'').

[406] For a more detailed summary of the related studies, *see* 2020 Staff Study and Farre-Mensa *et al.* (2014).

[407] *See* 2020 Staff Study. *See also* letters from Chamber II and Profs. Lewis and White; Lewis, C. M. *The Economics of Share Repurchase Programs* (Feb. 2019), *available at https://amac.us/wp-content/uploads/2019/02/The-Economics-of-Share-Repurchase-Programs1.pdf.*

[408] *See, e.g.,* 2020 Staff Study stating that ''most repurchases are conducted by companies with excess cash relative to investment opportunities,'' as pointed out by a commenter. *See* letters from Chamber II and Profs. Lewis and White.

[409] *See* Jensen, M., *Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers,* 76 Am. Econ. Rev. 323 (1986).

[410] *See* Brav *et al.* (2005).

[411] *See* Grullon, G. & Michaely, R., *The Information Content of Share Repurchase Programs,* 59 J. Fin. 651–680 (2004).

[412] *See, e.g.,* Guay, W. & Harford, J., *The Cash-Flow Permanence and Information Content of Dividend Increases versus Repurchases,* 57 J. Fin. Econ. 385 (2000); Jagannathan, M., Stephens, C., & Weisbach, M., *Financial Flexibility and the Choice between Dividends and Stock Repurchases,* 57 J. Fin. Econ. 355 (2000). *See also supra* notes 387–388 and accompanying text.

[413] *See* Hoberg, G. & Prabhala, N., *Disappearing Dividends, Catering, and Risk,* 22 Rev. Fin. Stud. 79 (2009) (showing that riskier firms are less likely to pay dividends).

[414] *See, e.g.,* Feng, L., Pukthuanthong, K., Thiengtham, D., Turtle, H.J., & Walker, T.J., *The Effects of Cash, Debt, and Insiders on Open Market Share Repurchases,* 25 J. Applied Corp. Fin. 55 (2013). The tax advantage of repurchases has been attenuated but not eliminated after the 2003 dividend tax cut. Outside of tax-exempt/tax-deferred accounts, all shareholders are subject to taxes on dividends for the year the dividend was paid. In the case of repurchases, only selling shareholders are subject to taxes on capital gains (the remaining shareholders do not pay taxes until they sell their shares). *See, e.g.,* Chetty, R. & Saez, E. *Dividend Taxes and Corporate Behavior: Evidence from the 2003 Dividend Tax Cut,* 120 Q. J. Econ. 791 (2005); Chetty, R. & Saez, E. *The Effects of the 2003 Dividend Tax Cut on Corporate Behavior: Interpreting the Evidence,* 96 Am. Econ. Rev. 124 (2006); Aboody, A. & Kasznik, R. *Executive Stock-Based Compensation and Firms' Cash Payout: The Role of Shareholders' Tax-Related Payout Preferences,* 13 Rev. Acct. Stud. 216 (2008); Blouin, J., Raedy, J., & Shackelford, D., *Dividends, Share Repurchases, and Tax Clienteles: Evidence from the 2003 Reductions in Shareholder Taxes,* 86 Acct. Rev. 887 (2011). Studies have found companies with investors less averse to dividends due to tax reasons are more likely to pay dividends, and vice versa. *See, e.g.,* Desai, M. & Jin, L. *Institutional Tax Clienteles and Payout Policy,* 100 J. Fin. Econ. 68 (2011). *See also* letter from Davis Polk.

[415] *See, generally,* Baker, M. & Wurgler, J., *Market Timing and Capital Structure,* 57 J. Fin. 1 (2002). Some other evidence suggests that firms tend to repurchase stock and issue debt when the cost of debt falls relative to the cost of equity. *See* Ma, Y., *Nonfinancial Firms as Cross-Market Arbitrageurs,* 74 J. Fin. 3041 (2019) (''Ma (2019)''). *See also* Hovakimian, A., *Role of Target Leverage in Security Issues and Repurchases,* 77 J. Bus. 1041 (2004) (finding that ''equity issues and repurchases do not offset the accumulated deviation from the target and they are timed to market conditions'').

[416] For evidence on the use of repurchases as a method of real earnings management, *see, e.g.,* Bens, D., Nagar, V., Skinner, D., & Wong, M.H.F. *Employee Stock Options, EPS Dilution, and Stock Repurchases,* 36 J. Acct. & Econ. 51 (2003) (finding that stock repurchases increase when ''(1) the dilutive effect of outstanding employee stock options (ESOs) on diluted EPS increases, and (2) earnings are below the level required to achieve the desired rate of EPS growth'' and concluding that executives' repurchase decisions are ''driven by incentives to manage diluted but not basic EPS, and strengthening our earnings management interpretation''); Bonaimé, A.A., Kahle, K., & Moore, D., *Employee Compensation Still Impacts Payout Policy,* Working Paper (2020) (finding ''a strong positive relation between the dilutive effect of stock-based employee compensation and share repurchases''); Burnett, B., Cripe, B., Martin, G., & McAllister, B., *Audit Quality and the Trade-Off Between Accretive Stock Repurchases and Accrual-Based Earnings Management,* 87 Acct. Rev. 1861 (2012).

repurchase decisions.[417] Investors may take this into account when evaluating EPS.[418] Nevertheless, earnings management-motivated repurchases can have negative real effects on the issuer and its shareholders, such as forgoing valuable investments.[419] Some sources disagree.[420] Announcements of repurchases and actual repurchase trades can also result in short-term upward price pressure.[421] Share price- or EPS-tied compensation arrangements can thus incentivize executives to undertake repurchases, in an attempt to maximize their compensation, even if such repurchases are not optimal from the shareholder value maximization perspective. A number of studies have examined the use of repurchases to influence compensation tied to per-share measures.[422] Further, a different study examined the real cost of EPS-motivated repurchases outside the context of compensation.[423] However, a different study documented a link between EPS targets and repurchases but did not find evidence of negative effects on shareholders.[424] As an important caveat, the discussed incentives would be weaker to the extent executive compensation plans and board committees that address executive compensation account for how repurchases would affect compensation targets and the value of incentive-based compensation.[425]

[417] *See* Brav *et al.* (2005).

[418] For example, Hribar *et al.* (2006), *supra* note 33, finds that the market discounts EPS announcements in situations in which EPS would have been shy of analyst expectations but for share repurchases (and where repurchases are disclosed along with quarterly earnings); Kahle, K. *When a Buyback isn't a Buyback: Open Market Repurchases and Employee Options,* 63 J. Fin. Econ. 235 (2002) (noting that the market appears to recognize the anti-dilutive motive for repurchases and reacts less positively to repurchases announced by firms with high levels of nonmanagerial options). Kurt (2018) studies the use of ASRs for real earnings management and concludes investors ''are not fooled'' by managers' use of ASRs as an earnings management device. However, Kurt (2018) notes that ''[u]pward revision observed in analysts' EPS forecasts upon the announcement of ASRs is short-lived, indirectly facilitating firms' use of ASRs to meet or beat consensus forecasts.'' *See* Kurt, A., *Managing EPS and Signaling Undervaluation as a Motivation for Repurchases: The Case of Accelerated Share Repurchases,* 17 Rev. Acct. Fin. 453 (2018). *But see* Edmans *et al.* (2022).

[419] For example, one recent study finds that repurchases used to push EPS above analyst expectations are accompanied by a 10% decrease in capital expenditures and a 3% decrease in research and development. *See, e.g.,* Almeida *et al.* (2016), *supra* note 33. Note that the Almeida *et al.* (2016) findings do not necessarily generalize to repurchases by issuers outside the range of EPS approaching the earnings target, or to repurchases unrelated to EPS manipulation. The Almeida *et al.* (2016) study further finds that, amongst the subset of issuers that are close to missing the EPS forecast, ''[i]t is clear that EPS-induced repurchases are on average not detrimental to shareholder value or subsequent performance,'' as pointed out by a commenter. *See* letters from Chamber II and Profs. Lewis and White. However, the Almeida *et al.* (2016) study also notes that ''some firms sacrifice valuable investments to finance share repurchases.'' A 2016 McKinsey & Co. report states that share repurchases do not improve shareholder returns simply by increasing EPS because, under certain conditions, there may have been more preferable uses for those funds such as debt reduction and reinvestment in the firm. *See* Ezekoye, O., Koller, T., & Mittal, A., *How Share Repurchases Boost Earnings without Improving Returns,* McKinsey (Apr. 29, 2016), *available at https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-share-repurchases-boost-earnings-without-improving-returns.*

[420] *See* PwC (2019) Share Repurchases, Executive Pay and Investment, BEIS Research Paper No. 2019/011 (''PwC Report'') (finding in UK data ''no relationship between share repurchases and investment'' and also finding that, even when focused ''on firms that would have just missed an EPS target in the absence of a repurchase, and thus are particularly likely to cut investment to finance a repurchase . . . [that] these firms did not cut investment more than other firms that would have just met an EPS target in the absence of a repurchase.''); Kay, I. & Martin, B. *Are Share Buybacks a Symptom of Managerial Short-Termism? New Insights on Executive Pay, Share Buybacks, and Other Corporate Investments,* PayGovernance (2019) (finding that ''four-year post-buyback performance on TSR and CapEx growth was higher for the companies in the large buyback sample than for the companies with smaller buybacks'', ''that companies with higher short-term TSR had equal or higher subsequent long-term TSR and CapEx growth'', and also suggesting that both companies with small and large buybacks ''appear to be optimizing earnings growth'').

[421] With respect to actual share repurchases, a recent study shows that price support provided by actual share repurchases improves price efficiency, even when manipulation concerns might be highest, such as those that occur prior to insider sales. *See* Busch, B. & Obernberger, S., *Actual Share Repurchases, Price Efficiency, and The Information Content Of Stock Prices,* 30 Rev. Fin. Stud. 324 (2017) (''Busch and Obernberger (2017)''). With respect to share repurchase announcements, some have suggested that managers may take advantage of positive stock price reactions to non-binding repurchase announcements and use disingenuous repurchase announcements to manipulate share prices. *See* Chan *et al.* (2010) (finding in 1980–2000 data, which predates the 2003 Item 703 amendments, that a limited number of managers may have used repurchases in a misleading way as ''cheap talk'', noting as a caveat that ''the total number of buybacks where managers may have been intending to mislead investors, while nonzero, also appears to be limited''). Such ''cheap talk'' may result in lower announcement returns. *See, e.g.,* Bonaimé, A.A., *Repurchases, Reputation, and Returns,* 47 J. Fin. & Quantitative Analysis 469 (2012) (''Bonaimé (2012)''); Bonaimé (2015). In contrast, other studies argue that ''cheap-talk'' repurchase announcements may correct mispricing by attracting additional market scrutiny. *See* Almazan, A., Banerji, S., & De Motta, A., *Attracting Attention: Cheap Managerial Talk and Costly Market Monitoring,* 63 J. Fin. 1399 (2008); Bhattacharya, U. & Jacobsen, S., *The Share Repurchase Announcement Puzzle: Theory and Evidence,* 20 Rev. Fin. 725 (2016). Further, as pointed out by some commenters, the 2020 Staff Study concludes that ''[r]epurchase announcements are accompanied by stock price increases. This announcement effect does not dissipate over time, as one would expect if repurchases were based on efforts to manipulate share prices.'' *See* letters from Chamber II and Profs. Lewis and White.

[422] *See, e.g.,* Cheng, Y., Harford, J., & Zhang, T., *Bonus-Driven Repurchases,* 50 J. Fin. & Quantitative Analysis 447 (2015) (''Cheng *et al.* (2015)'') (finding that ''when a CEO's bonus is directly tied to earnings per share (EPS), his company is more likely to conduct a buyback,'' with the effect being ''especially pronounced when a company's EPS is right below the threshold for a bonus award,'' that ''[s]hare repurchasing increases the probability the CEO receives a bonus and the magnitude of that bonus, but only when bonus pay is EPS based,'' and further finding that ''[b]onus-driven repurchasing firms do not exhibit positive long-run abnormal returns''); Kim, S. & Ng, J., *Executive Bonus Contract Characteristics and Share Repurchases,* 93 Acct. Rev. 289 (2018) (finding that ''managers are more (less) likely to repurchase shares and spend more (less) on repurchases when as-if EPS just misses (exceeds) the bonus threshold (maximum) EPS level,'' and that ''[m]anagers making bonus-motivated repurchases do so at a higher cost''); Marquardt, C., Tan, C., & Young, S. (2011) *Accelerated Share Repurchases, Bonus Compensation, and CEO Horizons,* Working paper (finding that firms are more likely to choose ASRs over open market repurchases ''when the repurchase is accretive to EPS, when annual bonus compensation is explicitly tied to EPS performance, when CEO horizons are short, and when CEOs are more entrenched''). *See also* letter from S. Kaswell (supporting benefits of additional disclosure about whether repurchase plans trigger additional executive compensation).

[423] *See* Almeida *et al.* (2016) (finding that ''[t]he probability of share repurchases that increase earnings per share (EPS) is sharply higher for firms that would have just missed the EPS forecast in the absence of the repurchase, when compared with firms that 'just beat' the EPS forecast'' and that ''EPS-motivated repurchases are associated with reductions in employment and investment, and a decrease in cash holdings'' and concluding that ''managers are willing to trade off investments and employment for stock repurchases that allow them to meet analyst EPS forecasts''). *See also* Rulemaking Petition 4–746.

[424] *See* Young, S. & Yang, J., *Stock Repurchases and Executive Compensation Contract Design: The Role of Earnings Per Share Performance Conditions,* 86 Acct. Rev. 703–733 (2011) (finding ''a strong positive association between repurchases and EPS-contingent compensation arrangements'' but also finding ''net benefits to shareholders from this association'' (including ''larger increases in total payouts'', a more pronounced ''positive association between repurchases and cash performance'' in the presence of surplus cash; greater likelihood of undervalued firms ''signal[ing] mispricing through a repurchase,'' and ''lower abnormal accruals'') and ''no evidence that EPS-driven repurchases impose costs on share-holders in the form of investment myopia'').

[425] *See* 2020 Staff Study (finding that, based on a review of compensation disclosures in proxy statements for a sample of 50 firms that repurchased the most stock in 2018 and 2019,''82% of the firms reviewed either did not have EPS-linked compensation targets or had EPS targets but their board considered the impact of repurchases when determining whether performance targets were met or in setting the targets'' and concluding that ''[m]ost of the money spent on repurchases over the past two years was at companies that either do not link managerial compensation to EPS-based performance targets or whose boards considered the impact of repurchases when determining whether EPS-based performance targets were met or in setting the targets, suggesting that other rationales motivated the repurchases''), which was noted by several commenters. *See, e.g.,* letters from Bishop, Cato, Chamber II, Coalition, Profs. Lewis and White, T. Rowe Price, Virtu, and Vistra. The 2020 Staff Study also notes that ''[collectively], these findings potentially suggest that most repurchase activity

Another instance of potentially inefficient repurchase behavior that some studies have shown could have a negative effect on investors involves insider incentives to raise the share price prior to insider sales.[426] Other studies reach different conclusions.[427] As a caveat, some studies note that in cases where repurchase announcements coincide with earnings announcements, insider sales activity after the repurchase announcement may be the result of pent-up liquidity demand because issuers generally prohibit insiders from trading in the period leading up to earnings announcements as part of blackout periods.[428] Further, in cases of findings related to trends in insider sales around repurchase announcements, such trends may not directly translate to patterns of insider sales around actual repurchases. As a final caveat, omitted variables may affect both insider sales and repurchases.[429] Conversely, some studies note that insider purchases of stock in conjunction with a repurchase announcement may strengthen the credibility of the repurchase signal.[430] CFOs report that they consider the price of the stock when deciding whether to repurchase stock.[431] Further, academic studies have found that firms conduct repurchases when stock prices are low.[432] The effects of such issuer trading on liquidity are not fully certain, with several studies finding improved liquidity during repurchase programs,[433] and several other studies pointing to adverse selection effects of trading by the better informed issuer.[434]

Presently, information about repurchases, aggregated at the monthly

does not represent an effort to artificially inflate stock prices or influence the value of option-based or EPS-linked compensation'', as noted by a commenter (*see* letters from Chamber II and Profs. Lewis and White). *See also, e.g.,* Fields, R., *Buybacks and the Board: Director Perspectives on the Share Repurchase Revolution,* Sept. 20, 2016, *available at https://corpgov.law.harvard.edu/2016/09/20/buybacks-and-the-board-director-perspectives-on-the-share-repurchase-revolution/* (concluding, based on interviews of ''44 directors serving on the boards of 95 publicly traded U.S. companies with an aggregate market capitalization of $2.7 trillion'' that ''most directors said that their companies are aware of the relationship between buyback programs and compensation and that they make deliberate, informed choices to ensure that they reward executives for desired behavior rather than for financial manipulation of share prices. Anticipated buyback effects on EPS are usually factored into EPS targets, they say, and unanticipated effects can be adjusted out.''); PwC Report (finding in the UK setting, which has daily reporting, ''no significant relationship between share repurchases and either the existence of an EPS condition or the proportion of an incentive award linked to that condition within executive pay incentives and share repurchases,'' and finding in UK survey data that ''30% of companies adjust their EPS targets contained within LTIPs for share repurchase activity, and most senior executives acknowledge share repurchases should be reviewed by remuneration committees.''); Bargeron, L., Kulchania, M., & Thomas, S. *Accelerated Share Repurchases,* 101 J. Fin. Econ. 69 (2011) (finding limited evidence of earnings management motives for ASRs in the presence of proxies for the value of flexibility); Bennett, B., Bettis, C., Gopalan, R., & Milbourn, T. *Compensation Goals and Firm Performance,* 124 J. Fin. Econ. 307 (2017) (in Table 5, not finding evidence that firms that just exceed the compensation EPS goal undertake more repurchases than firms that just miss the EPS goal, inconsistent with strategic use of repurchases to manage EPS targets in compensation contracts). *See also* letters from Chamber II; Vistra; Maryland Bar; Virtu; T. Rowe Price; Pay Governance; SCG; Coalition; Cato; PA Chamber; Bishop; and Profs. Lewis and White.

[426] *See, e.g.,* letters from AFREF *et al.,* Better Markets I, CFA Institute, CII, Oxfam, Prof. Palladino, and Public Citizen. *See also, e.g.,* Chan *et al.* (2010). *See also* Bonaimé, A.A. & Ryngaert, M.D., *Insider Trading and Share Repurchases: Do Insiders and Firms Trade in the Same Direction?,* 22 J. Corp. Fin. 35–53 (2013) (''Bonaimé and Ryngaert (2013)'') (finding that repurchases that coincide with net insider selling may be related to price support and/or reasons related to option exercises); Cziraki *et al.* (2021), *supra* note 34, (finding that ''[h]igher insider net buying is associated with better post-event operating performance, a reduction in undervaluation, and, for repurchases, lower post-event cost of capital. Insider trading also predicts announcement returns and long-term abnormal returns following events.'' They conclude their results suggest ''insider trades before corporate events [repurchases and SEOs] contain information about changes both in fundamentals and in investor sentiment''); Palladino (2020) (finding increased insider selling in quarters where buybacks are occurring); Ahmed, W., *Insider Trading Around Open Market Share Repurchase Announcements*, Working paper, University of Warwick (2017) (finding that ''insiders take advantage of higher post-[repurchase] announcement price and sell more heavily'', and that such selling is predictive of lower long-term returns). *See also* Rulemaking Petition 4–746, at 5 and note 17 (expressing concern and citing evidence of repurchases used to increase share prices at the time when insiders sell shares) and letter from Prof. Jackson, Dr. Hu, and Dr. Zytnick. *See also, generally,* Edmans *et al.* (2018), *supra* note 35 (finding that ''CEOs release 20% more discretionary news items in months in which they are expected to sell equity, predicted using scheduled vesting months'' and that ''[t]he increase arises for positive news, but not neutral or negative news, nor nondiscretionary news'' and concluding that ''[n]ews in vesting months generates a temporary increase in stock prices and market liquidity, which the CEO exploits by cashing out shortly afterwards''; as an important caveat, while the study includes buybacks among announcements, and based on other evidence, they are generally viewed as positive announcements, the study does not provide specific results for buybacks); Edmans *et al.* (2022), *supra* note 34 (finding that ''[v]esting equity is positively associated with the probability of a firm repurchasing shares'' but that ''it is also associated with more negative long-term returns over two to three years following repurchases'' and that ''CEOs sell their own stock shortly after using company money to buy the firm's stock, also inconsistent with repurchases being motivated by undervaluation'').

[427] *See, e.g.,* Liu and Swanson (2016) (finding that ''[c]orporate insiders do not sell from personal stock holdings during the price support quarter.''); *see also* Busch and Obernberger (2017) (concluding with respect to actual share repurchases, that price support provided by repurchases improves price efficiency, even when manipulation concerns might be highest, such as those that occur prior to insider sales).

[428] *See* Dittmann *et al.* (2022), *supra* note 40 (finding that ''both the timing of buyback programs and the timing of equity compensation, *i.e.,* the granting, vesting, and selling of equity, are largely determined by the corporate calendar through blackout periods and earnings announcement dates,'' ''not support[ing] the conclusion that CEOs systematically misuse share repurchases at the expense of shareholders,'' and concluding that ''equity compensation increases the propensity to launch a buyback program when buying back shares is beneficial for long-term shareholder value.''); and Profs. Lewis and White (finding that the rise in insider selling after repurchase announcements is driven by outliers and issuer blackout periods) and letter from Chamber II. As a caveat, we note that the commenters and the Dittmann *et al.* (2022) study do not appear to have ruled out the possibility that repurchase and vesting calendars are not aligned coincidentally.

[429] As noted in Edmans *et al.* (2022), an analysis of insider sales around repurchases may be susceptible to endogeneity concerns due to omitted variable bias (*e.g.,* if poor investment opportunities cause the CEO to divest shares and also make it optimal for the firm to pay out surplus free cash flow).

[430] Announcement returns are positively related to past insider purchases, especially for firms that are priced less efficiently. *See, e.g.,* Dittmar & Field (2015) (finding that ''repurchasing firms with relatively high net insider buying have significantly lower relative repurchase prices'' and concluding that firms with more net insider buying repurchase undervalued stock); Babenko, I., Tserlukevich, Y., & Vedrashko, A., *The Credibility of Open Market Share Repurchase Signaling,* 47 J. Fin. & Quantitative Analysis 1059 (2012) (''Babenko and Vedrashko (2012)''); Bonaimé and Ryngaert (2013) (finding that net insider buying reinforces the undervaluation signal conveyed by repurchases while net insider selling weakens it); Cziraki *et al.* (2021), *supra* note 34, (showing that ''pre-event insider trading contains information regarding future changes in the cost of capital for repurchasing firms''). Setting aside the signaling theory, purchases by insiders during an issuer's repurchases if such insiders are in possession of material nonpublic information may represent unlawful insider trading that may harm other market participants. Similar to insiders, issuers that purchase their securities while in possession of material nonpublic information may be subject to Rule 10b–5 liability.

[431] Brav *et al.* (2005).

[432] *See, e.g.,* Dittmar and Field (2015); Ben-Rephael *et al.* (2014); Chan *et al.* (2007); Cook *et al.* (2004).

[433] *See, e.g.,* Busch and Obernberger (2017); Cook *et al.* (2004); Hillert, A., Maug, E., & Obernberger, S., *Stock Repurchases and Liquidity,* 119 J. Fin. Econ. 186 (2016). *See also* letters from Chamber II and Profs. Lewis and White; Lewis, C.M., & White, J.T. (2021*). Corporate Liquidity Provision and Share Repurchase Programs,* U.S. Chamber of Commerce: Center for Capital Markets Competitiveness (Fall 2021), *available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/09/CCMC_Stock-Buybacks_WhitePaper_10.2.21.pdf. See also* letter from Chamber II.

[434] *See, e.g.,* Barclay, M.J., & Smith, C.W. *Corporate Payout Policy: Cash Dividends versus Open Market Repurchases,* 22 J. Fin. Econ. 61 (1988); Ginglinger, E., & Hamon, J., *Actual Share Repurchases, Timing and Liquidity, 31 J. Banking & Fin.* 915 (2007) (using data from France); Brockman, P., & Chung, D.Y. *Managerial Timing and Corporate Liquidity: Evidence from Actual Share Repurchases,* 61 J. Fin. Econ. 417 (2001) (using data from Hong Kong).

level, is provided in periodic reports (on a quarterly basis for domestic issuers that report on Forms 10–Q and 10–K, on a semi-annual basis for Listed Closed-End Funds that report on Form N–CSR, and on an annual basis for FPIs that report on Form 20–F).[435] Issuers are not required to provide more disaggregated information than the monthly aggregates to investors about repurchases. This lack of disaggregated disclosure about past repurchases likely contributes to information asymmetries and thus makes it harder for investors to evaluate an issuer's share repurchase program, determine the correct valuation of an issuer's securities, and as a result make informed investment decisions.

Although issuers, particularly exchange-listed issuers, may often announce details of their repurchase programs on a voluntary basis, issuers are not currently required to do so, or to disclose the structure or objectives and rationales for their repurchase program. In particular, to our knowledge, most issuers subject to the final amendments do not currently disclose daily share repurchase information. Further, issuers are not required to disclose whether they allow insiders to trade during repurchases. Thus, it can sometimes be difficult for investors to determine whether the undertaken repurchases were efficient and aligned with shareholder value maximization, or were driven at least in part by factors other than shareholder interests.

The last significant change to repurchase reporting was adopted in 2003,[436] when the Commission required issuers to present monthly data on actual repurchases on a quarterly basis in Form 10–Q or 10–K for domestic corporate issuers, semi-annual basis in Form N–CSR for Listed Closed-End Funds, and on an annual basis in Form 20–F for FPIs. One study examined the consequences of this change and found that ''[f]irms announce significantly fewer and slightly smaller open market repurchase plans in the enhanced disclosure environment,'' however, ''completion rates (the amount of stock repurchased as a percentage of the announced amount) significantly increase.'' [437] The study further states that ''[m]ore conservative announcement strategies and more aggressive completion rates are consistent with a decline in false signaling . . . open market repurchase announcements are viewed as more credible, on average, in the enhanced disclosure environment.'' [438] However, as the study notes, ''[a]s with any analysis based on a regulatory change affecting all firms simultaneously, other unobservable, macroeconomic trends could have affected repurchase behavior.'' [439]

Available data on issuer use of Rule 10b5–1 plans under the baseline was discussed in Section V.A.1 above.

In Sections V.B. and V.C. below we evaluate the anticipated costs and benefits of the final rule and the anticipated effects of the final rule on efficiency, competition, and capital formation.

B. Benefits

We begin the discussion with the general benefits applicable to all of the final amendments, continue to discuss the benefits specific to the new quantitative repurchase disclosure, and then proceed to the benefits specific to other amendments.

1. General Benefits of the Disclosures

We anticipate the amendments will give rise to benefits by strengthening investor protection, improving market efficiency, and facilitating capital formation. The amended disclosure requirements are expected to benefit investors (including existing shareholders contemplating a sale of securities or a purchase of additional securities) by providing investors with more comprehensive and comparable disclosures about share repurchases and thus enabling them to value the issuer's securities more accurately, resulting in better informed investment decisions.[440] Existing evidence in academic research (discussed in detail in Section V.A.2. above) and various comment letters on the proposal [441] support the presence of significant information asymmetries between insiders and other investors on undertaken repurchases and the extent to which they may relate to the fundamental value of the issuer's stock. The issuer's evolving knowledge of the issuer's future prospects, and thus, share valuation may be reflected in the execution of actual share repurchases following a repurchase program announcement. Thus, more comprehensive disclosure of the issuer's repurchase strategy may indirectly inform investors about the issuer's fundamental value, in addition to other existing disclosures (unrelated to issuer repurchases). Moreover, to the extent that reasons for actual repurchases may be confounded by managerial self-interest, additional information on the timing of repurchases can be indicative of such agency problems, informing investors about the likely impacts of repurchases on shareholder value.[442] Hence, we disagree with some commenters' [443] suggestion that there is no market failure necessitating additional repurchase disclosures. Continuing the existing regime where issuers are only mandated to provide abbreviated and aggregated disclosure of share repurchases, as compared to the final amendments, and relying solely on voluntary disclosure of additional repurchase plan details to fill these information gaps is not a solution to the information asymmetry issues because of market failures arising from collective action and moral hazard problems.

Specifically, there are potential collective action problems that preclude an optimal level of additional voluntary disclosure. Voluntarily disclosing the additional details of their share repurchase strategy when other issuers do not do so can place the issuer at a relative disadvantage. For example, such disclosures can be costly to individual firms due to the costs of compiling the disclosures, the potential legal risk stemming from such disclosures, and the potential costs of leaking valuable private information to competitors that may infer proprietary information about the issuer. In addition, such disclosures may reveal information to other traders that may trade against the issuer, resulting in a less favorable repurchase price, particularly for multi-quarter repurchase programs. While more comprehensive repurchase disclosure is privately costly to individual issuers in such a voluntary framework, such disclosure has positive informational externalities for investors and other market participants which are not internalized by each issuer, which may lead issuers to rationally under-disclose relative to what is optimal from the investors' perspective.[444]

[435] In addition to the disclosures on Form N–CSR that provide more detailed information about Listed Closed-End Fund repurchases, Form N–CEN also requires closed-end management investment companies to indicate whether they engaged in a repurchase during the reporting period and, if so, for what type of security. *See supra* footnote 7.

[436] *See* 2003 Adopting Release, *supra* note 5.

[437] *See* Bonaimé (2015).

[438] *Id.*

[439] *Id.*

[440] *See supra* notes 403–404, 402–404, 432 and accompanying text.

[441] *See supra* notes 65, 146, 247, and 264.

[442] *See supra* notes 416–426 and accompanying and following text.

[443] *See, e.g.,* letters from Chamber II and Profs. Lewis and White for a detailed discussion of this argument.

[444] As an alternative to the voluntary repurchase strategy disclosure, to address the information asymmetries, insiders could publicly reveal their private information about the stock's fundamental value. However, an individual issuer doing so could reveal private information on the firm's strategy to their competitors, also giving rise to a collective

Under the final amendments, all issuers would be required to follow the same standard framework to disclose repurchase information at the level of detail that facilitates investor evaluation of repurchase information and helps them make comparisons among all issuers, thus enabling better informed investment decisions. The final amendments would therefore address the aforementioned market failure resulting from collective action problems.

Furthermore, to the extent that managerial self-interest may affect some repurchase decisions, moral hazard problems may also contribute to this market failure by undermining the optimal provision of voluntary disclosure about share repurchases to investors. In order for voluntary disclosure to result in the complete revelation of all relevant private information, there would need to be no agency problems (*i.e.,* no conflicts of interest between managers and shareholders) such that managers' sole objective with respect to repurchase disclosures would be to optimally disclose to shareholders information about repurchases. However, if managers have other objectives and incentives that interfere with the decision to make fulsome repurchase disclosures on a voluntary basis, reliance on the additional disclosures being made voluntarily may not result in the same complete information. For example, if some repurchases are not made to maximize shareholder value due to agency problems, managers may not wish to provide detailed disclosure. Moreover, when agency problems exist, investors can no longer be sure if the absence of additional, voluntarily provided disclosure reflects good or bad news for the firm, given that some managers may have self-serving incentives. To the extent that there are instances where some repurchase decisions benefit the management rather than maximize shareholder value, they would give rise to agency conflicts with respect to providing sufficient disclosure about repurchases.

More comprehensive and standardized disclosure about recent repurchase activity is therefore expected to alleviate information asymmetries about an issuer's repurchase strategy and therefore be beneficial to investors (as discussed in detail in Section V.B. below). Further, the final amendments will ensure greater uniformity across issuers in the provision of qualitative and quantitative information about repurchases to investors, facilitating investor comparison and analysis of information across issuers and time periods. We thus believe that the decrease in information asymmetry as a result of the amended disclosure requirements would benefit investors, facilitating better informed investment decisions. Some commenters have expressed concern that the disclosure mandated by the amendments will undermine benefits to investors by eliminating information acquisition incentives.[445] However, the disclosure will not eliminate all information asymmetries for several reasons: (i) the final amendments include a delay in the timing of the disclosure of the issuer's repurchase trades; (ii) the final amendments require the revelation of significant aspects of the repurchase program rather than require the issuers to reveal the entirety of its private information; and (iii) investors have disclosure processing costs and differ in their learning from, and analysis of, public disclosures.[446]

Relative to the baseline of existing disclosure requirements, the final amendments will require more comprehensive and detailed disclosure about issuer repurchase programs (including their structure and objectives, policies related to insider trading around repurchases, and information about issuer repurchase plans under Rule 10b5–1) and actual repurchases undertaken by issuers, enabling more insight into issuers' repurchase decisions and how they impact shareholder value.

The benefits of the amended disclosure requirements may vary across investors. The described benefits may be more limited for some sophisticated investors to the extent that those investors can gauge partial information from the existing disclosures and public announcements of repurchase programs, and to the extent that some large repurchases have price impact, indirectly from existing market data. However, information that is available today is generally much less extensive and much less standardized across issuers than is required under the final amendments. Further, investors may differ in their ability to efficiently process and interpret the additional disclosures. For example, some commenters indicated that the benefit of granular day-by-day information about repurchases for informing trading strategies may be greatest for more sophisticated traders.[447] However, overall, we believe the amendments will result in significantly more standardized, comparable, accessible, and generally more comprehensive disclosure about repurchases, for all repurchasing issuers subject to the amendments, which is expected to benefit all investors, including less sophisticated investors.

2. Additional Quantitative Repurchase Disclosure

The more detailed disclosure of actual repurchases at the daily level will provide additional information to inform investment decisions compared to repurchase information aggregated to the monthly level that is required to be disclosed today (and voluntary announcements of repurchase programs issuers make today). More granular data on daily repurchase activity levels and repurchase prices, relative to existing disclosures, can provide more insight to investors about the issuer's share repurchase strategy, including the timing of execution of share repurchase decisions, the evolving outlook on the valuation of its shares (as revealed by issuer trading), as well as how recent repurchase decisions relate to other value-relevant corporate decisions. Investors are expected to derive additional information benefits from combining the amended repurchase disclosures with existing financial and other disclosures in periodic reports, earnings guidance and earnings announcements, proxy statements, etc. In addition, for FPIs that presently are subject to repurchase disclosure requirements in annual reports on Form 20–F, the amended disclosure requirements will ensure significantly timelier disclosure of repurchase information, making it available to investors on a quarterly basis.

action problem—thus, a voluntary regime results in too little disclosure.

[445] *See* letters from Chamber II and Profs. Lewis and White, referring to the argument, motivated by Grossman and Stiglitz (1980), that ''[w]ithout some level of asymmetric information, there would be fewer incentives to invest in information collection, resulting in less price discovery and a corresponding reduction in liquidity.'' *See* Grossman, S.J., & Stiglitz, J.E. (1980). *On the Impossibility of Informationally Efficient Markets,* 70 Am. Econ. Rev. 393.

[446] *See* Blankespoor, E., deHaan, E. and Marinovic, I. (2020) *Disclosure Processing Costs, Investors' Information Choice, and Equity Market Outcomes: A Review,* 70 J. Acct. & Econ. 101344 (discussing the investor costs of ''monitoring for, acquiring, and analyzing [public] firm disclosures,'' which they collectively characterize as ''disclosure processing costs,'' and noting that ''[t]he existence of processing costs means that learning from disclosures is an active economic choice, much like learning from any private information source. Rational investors expect a competitive return to processing and, thus, disclosure pricing cannot be perfectly efficient'' and that ''[t]here is extensive evidence that disclosure processing costs affect all types of investors, from the smallest to most sophisticated, and can affect stock returns and other market outcomes within rational equilibria.'').

[447] *See infra* note 452.

Over the last several decades, repurchases have become a partial substitute for dividends as a means of returning cash to investors.[448] Unlike dividends which are smoothed and therefore highly predictable, repurchases are less so. Overall, the additional disclosure under the amended requirements will enable investors to better understand the issuer's share repurchase decisions and how they relate to shareholder value maximization, what the company's repurchase strategy is (including the use of Rules 10b–18 and 10b5–1), how the repurchase strategy varies with market conditions, as applicable, and whether the repurchase is based on the need to gradually return cash, potential temporary mispricing, or other factors. This will allow investors, particularly, shareholders that sell shares during issuer repurchases, to evaluate a more consistent and standardized disclosure across various issuers, relative to the baseline. Furthermore, any decrease in the information asymmetry between issuers and investors and among investors due to the final amendments should contribute to a reduction in adverse selection costs, which may promote liquidity.

In addition, repurchase activity data disaggregated on a day-by-day basis, combined with other existing disclosures and public information (*e.g.,* dates and details of earnings announcements, analyst forecasts, earnings guidance, acquisition announcements, compensation awards, insider trades etc.), may enable investors to evaluate more accurately whether some recent repurchases coincided with events that may give rise to repurchase incentives other than undervaluation of shares or distribution of excess free cash flow (*e.g.,* meeting/beating the consensus earnings forecast ahead of the earnings announcements, increasing the share price prior to an insider's sale, meeting a threshold in the compensation arrangement etc.). To the extent that the amended disclosure requirements refine the ability of investors to gauge the likely impacts of share repurchases on shareholder value maximization, they are expected to result in better informed investment decisions. Further, the amended disclosure is expected to provide investors with additional context (with a greater level of granularity than the existing disclosure presently reported on an aggregated, month-by-month basis) for interpreting past repurchase announcements, which may help investors in evaluating future repurchase announcements by the issuer. Finally, one potential indirect effect of the amendments may be to disincentivize repurchases that are not conducive to shareholder value maximization, to the extent they are present at a given firm, by drawing investor attention to such instances, benefiting shareholders.

Some commenters on the daily reporting proposal have suggested that repurchase data at the daily level may be noisy [449] (in the sense that daily fluctuations in repurchases may have various causes other than new information about the firm's valuation) [450] and also lead some investors to draw inaccurate inferences.[451] These considerations are in our view unlikely to limit the information benefits of the disclosure, particularly in the presence of sophisticated investor bases. Further, the change from the proposal will allow investors to analyze daily repurchase data within the context of the repurchase disclosures for the entire quarter and the accompanying qualitative disclosures, filtering out noise better, rather than trade in response to each daily report, potentially alleviating some of the commenter concerns about noise and volatility.

While some commenters have noted the concern that the daily granularity of repurchase information may represent data that is too disaggregated for retail investors to easily parse and benefit from,[452] we disagree that this information will widen information asymmetries among investors. By making more detailed information accessible to all investors which was not accessible in any way before, we expect the final amendments to provide more information to retail investors rather than less. Thus retail investors are expected to incrementally benefit from the final amendments.

Consistent with the existing repurchase disclosure requirement, the new disclosure of historical daily repurchase activity will be required to be filed rather than furnished. Having the information be filed, rather than furnished, ensures consistency in the liability standard applicable to the additional repurchase disclosures provided under amended Item 703 and the disclosures required to be provided under Item 703 today.[453]

3. Additional Qualitative Repurchase Disclosures

a. Objectives and Rationales and Repurchase Program Structure Disclosures

Further, amended Item 703 [454] will require periodic disclosure of the objectives and rationales, as well as the structure, of the issuer's repurchase program. This disclosure is expected to improve the ability of investors to assess the shareholder value implications of the issuer's repurchase policy.[455] Such information benefits are not limited to instances where share repurchases are not aligned with shareholder value maximization. In particular, as discussed in Section V.A.1 above and noted by a commenter,[456] there are various scenarios where share repurchases are aligned with shareholder value maximization (for example, repurchasing undervalued securities, signaling future issuer prospects, distributing excess free cash flow, or adjusting capital structure). Disclosure of the objectives and rationales of share repurchases that enhance shareholder value is also expected to inform investor decisions and potentially provide investors with a more comprehensive picture of the repurchasing issuer's circumstances and future outlook. We continue to recognize the fact that the benefits of the

[448] *See supra* note 389.

[449] *See supra* notes 79–81.

[450] *See also* Core, J.E. *A Review of the Empirical Disclosure Literature: Discussion,* 31 J. Acct. & Econ. 441 (2001) (noting the finding in Bushee and Noe (2001) that ''increases in 'transient' institutional investors (institutions that trade aggressively) are associated with increases in stock price volatility'' and stating that ''[a]ssuming that increases in stock price volatility are costly, this finding is consistent with the intuition that partial disclosure is optimal, and that too much disclosure can be as costly as too little disclosure.'')

[451] *See supra* notes 79–80, 84–85, and 92. *But see, e.g.,* letter from Roosevelt (disagreeing with the idea that daily data would lead to too much noise).

[452] *See supra* notes 86–87. *But see supra* note 65 (discussing comment letters supporting the information benefits of higher-frequency reporting for investors, including individual investors) and *see also, generally,* Easley, D., & O'Hara, M. *Information and the Cost of Capital* 59 J. Fin. 1553 (2004) (''Easley and O'Hara (2004)'') (showing, in a theoretical framework, a positive role for public information because it reduces the risk for uninformed traders of holding the asset). Moreover, in equilibrium, the ability of sophisticated investors to capitalize on their superior information processing technology strengthens their incentive to compete for information and contributes to greater informational efficiency of prices. Furthermore, many of the sophisticated institutional investors may be involved in delegated portfolio management, advising or managing portfolios for the benefit of less sophisticated clients.

[453] *See supra* note 7.

[454] *See supra* note 7.

[455] *See supra* notes 146–148 and 247 and accompanying text (discussing comment letters that supported the information benefits of the amended Item 703 disclosures of the objective and rationale of the repurchase program and the use of Rules 10b5–1 and 10b–18 to conduct the repurchase program).

[456] *See, e.g.,* letter from Chamber II for a detailed discussion.

information about the rationales, and the structure of, repurchase programs could be limited in cases where issuers already voluntarily provide similar information in repurchase program announcements or periodic reports, or if some investors are able to infer the purpose or structure of repurchases from other public information.[457] The benefits of the information about the rationales for repurchases may also be limited if such disclosures provide relatively little specificity to investors.[458] However, as discussed above, the final amendments will require more standardized and comparable disclosure of the rationales for all issuers subject to the amendments, giving all investors equal access to this information and thus facilitating all investors' ability to process this information more effectively.

In some cases, incentives for repurchases may not be aligned with shareholder value maximization, as discussed in Section V.A.2 above. The inclusion of the disclosure of the objectives and rationales for share repurchases may aid investors in assessing whether recent repurchases were consistent with shareholder value maximization, potentially resulting in better informed investment decisions.

b. Issuer Rule 10b5–1 Repurchase Plans

The new disclosure requirements under Item 408(d) (discussed in Section III.D.3 above) will benefit investors in companies that undertake share repurchases under Rule 10b5–1 by providing greater transparency about such trading arrangements.[459] This enhanced transparency should enable better informed investment decisions and more efficient allocation of investor capital. The timing of issuer trading arrangement adoptions and terminations, as well as a description of the material terms of the trading arrangements, is expected to provide additional insight into the issuer's repurchase strategy and the implementation of the previously announced repurchase plans, potentially aiding investors in making more informed investment decisions. These informational benefits may be lower in cases in which investors already can obtain sufficient insight into the issuer repurchase program from existing repurchase disclosures.

Informational benefits of the Item 408(d) disclosure may also be lower in cases of trades that are not driven by temporary undervaluation of issuers' shares but, for instance, involve gradual disbursement of excess cash flow or rebalancing of capital structure towards a target leverage ratio. Finally, similar to the recently adopted Item 408(a) related to officer and director trading arrangements, in a change from the proposal, price terms of issuer Rule 10b5–1 plans will be outside the scope of the new Item 408(d) disclosure. This change will reduce the informational benefits to investors, compared to the proposed amendments.

c. Insider Trading Checkbox and Policies and Procedures Disclosures

The final amendments require disclosure of: (i) any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions, and (ii) whether any section 16 reporting officer or director of an issuer that files on domestic forms—or senior management or directors of an FPI—purchased or sold shares or other units of the class of the issuer's securities that are the subject of an issuer share repurchase plan or program within four business days before or after the issuer's repurchase announcement. These requirements may also benefit investors by enabling better informed investment decisions.[460] This information may help investors better interpret repurchase program announcements and disclosures of actual repurchase activity in formulating projections of an issuer's future share price. As one example, a lack of restrictions on insider selling during repurchases, alongside historical disclosures of insider selling, may help investors gauge whether a repurchase announcement, or actual repurchases, may be inefficient, for example, potentially motivated by boosting the share price prior to insiders' sales of their securities, rather than conveying a true signal of undervaluation or efficiently disbursing excess cash.[461] As another example, such a disclosure may also prompt investors to check whether insiders bought shares within a few days before the share repurchase announcement. In a change from the proposal, after considering commenter concerns about the utility of the disclosure, we are limiting the checkbox disclosure to insider trading within four business days, rather than ten business days, before and after the repurchase announcement. By focusing the disclosure on a narrower time frame more specific to the repurchase announcement, this is expected to improve the informativeness of the disclosure to investors.

As an indirect effect of the amendments, if the additional disclosures draw investor scrutiny to insider selling during repurchases, to the extent it occurs at some companies,[462] the amendments also may disincentivize repurchase announcements and actual repurchases motivated by boosting share prices in advance of insider selling, to the extent such activity exists, instead of shareholder value maximization, or lead issuers to adopt policies prohibiting such insider selling.[463] The benefits of the disclosure of whether any officer or director has purchased or sold securities of the issuer around the repurchase announcement are likely to be small for many issuers that file on domestic forms [464] to the extent the investors can obtain the same information from existing Exchange Act section 16 disclosures and public announcements of repurchases.[465] Nevertheless, the checkbox disclosure should present this information to investors in an incrementally more accessible way, resulting in a small decrease in the costs of accessing this information for those investors that do not already collate beneficial ownership filings. Further, for

[457] *See* letter from Chamber II. *See also, e.g.,* Bonaimé (2012) (tabulating, in Table 3, evidence on the stated motive of the announced repurchase program and program completion rates). The paper finds that ''[f]ew stated motives for repurchases affect completion rates. Firms that mention undervaluation or general corporate purposes in their announcements have significantly lower completion rates, while firms that mention extending a prior plan or having a strong cash position have significantly higher completion rates on average. With the above exceptions, completion rates depend more on what issuers are doing (implied motives) than on what they are saying (stated motives).'' As a caveat, data obtained from a voluntary regime may not fully generalize to the mandatory disclosure of the rationale for repurchases under the amendments. *See also, e.g.,* letters from Cravath, Dow, and Maryland Bar, which indicate that investors are unlikely to benefit from the disclosure of whether repurchases were structured under Rule 10b5–1(c)(1) or Rule 10b–18.

[458] *See also supra* note 250 and accompanying text (discussing comment letters that stated that the objective and rationale disclosure would result in boilerplate disclosure that will not prove meaningful to investors).

[459] *See supra* note 339.

[460] *See supra* note 264 and accompanying text.

[461] *See supra* note 426.

[462] *See supra* note 426 and accompanying text.

[463] Studies have found evidence that changes in mandatory disclosure affect behavior. *See, e.g.,* Chuk, E.C., *Economic Consequences of Mandated Accounting Disclosures: Evidence from Pension Accounting Standards,* 88 Acct. Rev. 395 (2013); Bonaimé (2015).

[464] Officers and directors of FPIs are not subject to section 16 reporting obligations and would therefore incur higher costs.

[465] *See supra* note 272 (discussing comment letters that supported the benefits of requiring the checkbox disclosure). *But see supra* notes 276–282 (discussing comment letters that indicate that this disclosure is unnecessary).

investors in FPIs whose officers and directors are not subject to section 16, the disclosure will provide new information that investors may utilize in conjunction with the qualitative and quantitative repurchase disclosures.

4. Inline XBRL

The use of a structured data language (specifically, Inline XBRL) for the repurchase disclosures under the final amendments will enable automated extraction of data on issuers' repurchase programs and actual repurchases, which will allow investors, information intermediaries, and other market participants to efficiently perform large-scale analyses and comparisons of repurchases across issuers and time periods, in line with the suggestions of various commenters that it would improve the usability of the data.[466] Structured data on repurchases could also be efficiently combined with other information available in a structured data language in corporate filings (*e.g.,* financial statement information in periodic reports, as well as information on insider sales and purchases of securities) and with market data contained in external machine-readable databases (*e.g.,* information on daily share prices and trading volume). The use of a structured data language will also enable considerably faster analysis of the disclosed data by investors and other market participants. In that regard, we expect the particular investors most likely to use the structured disclosures for their analysis are institutional investors with the sophistication to process structured data; retail investors will be more likely to benefit indirectly from the use of structured disclosure by other parties.[467]

As with the repurchase disclosures, the Inline XBRL structuring requirements for the insider trading disclosures should augment their benefits by improving their usability. The magnitude of these benefits is likely to be modest to the extent that past insider selling activity around past repurchases, disclosed on beneficial ownership filings, could be sufficiently representative of future insider selling behavior in such circumstances, even in the absence of a disclosure of restrictions. The magnitude of these benefits of reduced information asymmetry may further be limited to the extent that the existing repurchase and disclosure practices are already sufficient for price efficiency.[468]

C. Costs

We begin the discussion with the general costs applicable to all of the final amendments, continue to discuss the costs specific to the new quantitative repurchase disclosure, and then address the costs specific to other amendments.[469]

1. General Costs of the Disclosures

The amended disclosure requirements will impose costs on issuers (and therefore existing shareholders). The costs of the additional quantitative repurchase disclosure include direct (compliance-related) costs to compile and report additional disaggregated repurchase data compared to what is presently required by Item 703 of Regulation S–K, Item 16E of Form 20–F, and Item 14 of Form N–CSR (and for FPIs not reporting on domestic forms, which file annual reports on Form 20–F today, to provide repurchase disclosures on new Form F–SR, on a significantly more timely and frequent basis than required today). Such direct costs of compliance with the final amendments may include both in-house counsel and external costs.

The final amendments will also impose indirect costs, potentially affecting the shareholder value. A potential indirect cost of the final amendments is the risk of sharing sensitive information with competitors.[470] It is unclear how likely it is that the amended disclosure requirements of historical repurchases or the disclosure of the rationales behind, and structure of, repurchases reveals significant proprietary information about the issuer's business and repurchase strategy, above and beyond competitive information that may be revealed by other disclosures about the business and financial condition of the issuer. Thus, we expect such indirect costs to be relatively modest for most issuers.

Another potential indirect cost of the amended disclosure requirements is the possibility that the amended disclosure requirements cause issuers to inefficiently decrease repurchases or otherwise inefficiently deviate from an optimal payout policy. For example, the described costs of the amended disclosure may potentially discourage some issuers from repurchases that would otherwise be optimal for shareholder value (*e.g.,* as a more flexible method of payout that is generally more efficient from the personal tax standpoint, compared to dividends).[471] Such issuers may instead inefficiently overweigh dividends[472] or reduce overall corporate payouts and inefficiently retain excess cash within the firm. Further, if the costs of the amended disclosure requirements cause issuers to decrease overall payouts, even if issuers lack positive-net present value investment opportunities, the resulting decrease in the ability of investors to efficiently reallocate cash to other, higher-net present value investment opportunities, may potentially lead to inefficiencies in the aggregate allocation of capital across issuers.[473] Indirect costs specific to the additional quantitative repurchase disclosure are discussed in Section V.C.2 below.

The described direct and indirect costs of the amended disclosure requirements, if realized, will decrease shareholder value for affected issuers.

[466] *See supra* note 360.

[467] *See supra* note 452. *But see* Birt, J.L. Muthusamy, K. & Bir, P., *XBRL and the Qualitative Characteristics of Useful Financial Information,* 30 J. Acct. Res. 107 (2017) (finding ''financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors''). Evidence indicates XBRL tagging has improved analyst coverage and, in some cases, forecast accuracy. *See, e.g.,* Liu, C., Wang, T., & Yao, L.J., *XBRL's impact on analyst forecast behavior: An empirical study.* J. Acct. Pub. Pol., 33 (2014). Retail investors have been observed to rely heavily on analyst interpretation of financial information. *See, e.g.,* Lawrence, A., Ryans, J.P., & Sun, E.Y., *Investor Demand for Sell-Side Research,* 92 Acct. Rev. 2 (2017).

[468] For example, one recent study shows that price support provided by actual share repurchases contributes to improved price efficiency, even when manipulation concerns might be highest, such as those that occur prior to insider sales. *See* Busch and Obernberger (2017). *See also* letter from Chamber II (stating that managers strategically use share repurchases during periods of uncertainty and that ''these effects help mitigate risks, allow institutional and retail investors alike to buy and sell shares without having a large price impact, and stabilize trading markets. Thus, repurchases help to reduce volatility, which presents a benefit to all shareholders, including retail investors, regardless of whether investors buy and sell shares in their own accounts or participate indirectly through investment in retirement accounts.'').

[469] *See* Section VI for a detailed description of the estimated burden of the amended disclosure requirements for purposes of the Paperwork Reduction Act (''PRA''). 44 U.S.C. 3501 *et seq.*

[470] *See supra* note 249 and accompanying text (discussing commenter concerns that the disclosures required by the amendments could divulge competitive or sensitive information). *See also supra* notes 81 and 151 and accompanying text (discussing commenter concerns about the additional disclosure potentially disrupting confidential merger negotiations).

[471] *See supra* note 414. *See also, e.g.,* letters from Davis Polk, DLA Piper, Quest, SCG, and Vistra. However, the personal tax treatment is not a concern for investors exempt from taxation.

[472] *See, e.g.,* letter from PA Chamber (noting that the cost of the amendments will particularly affect companies that rely on share repurchases as a rational means of investor return and do not have the business model to make shareholder returns entirely or even partially via dividend).

[473] *See also* letter from Vistra (noting that the proposed daily reporting frequency requirements could be so ''unreasonably burdensome as to deter potential capital allocation decisions'').

Finally, the amended disclosure requirements may also affect financial intermediaries involved in executing repurchases on behalf of issuers. Such intermediaries may incur additional costs of compiling disaggregated information about repurchase trades to facilitate the issuer's compliance with the amended disclosure requirements. Such information is likely to be relatively readily available. Thus direct costs are likely to be modest. Nevertheless, intermediaries may need to make incremental modifications to how they use their existing trade recordkeeping systems to extract and compile the information required by the issuer for the new disclosure. Financial intermediaries may also incur indirect costs of the amended disclosure requirements in the form of lower revenue if the amended disclosure requirements lead to a decrease in repurchases.[474] Intermediaries may pass on their costs to issuers, which will in turn affect shareholders.

2. Additional Quantitative Repurchase Disclosure

The costs of the additional quantitative repurchase disclosure include direct (compliance-related) costs to compile and report additional disaggregated repurchase data. The aggregate direct costs of compliance may be larger for issuers that repurchase shares more often and may incur an incrementally higher cost of preparing the new repurchase disclosures, including the new periodic disclosure of historical repurchase activity disaggregated at the daily level. While we expect many issuers to already compile repurchase information to comply with current monthly aggregate reporting requirements, issuers that do not presently compile such repurchase information may incur some incremental costs to modify their recordkeeping systems and processes to compile such information. Issuers may incur a cost to prepare the new disclosures (including the cost of additional time of in-house counsel or the cost of retaining an outside service provider). In addition, issuers may need to update their internal recordkeeping systems and policies and procedures to maintain the information required by the final amendments and report it on the frequency required by the amendments.

As one commenter on the daily reporting frequency proposal indicated, companies may incur additional costs to incorporate new disclosure into their disclosure controls and procedures to ensure accurate reporting.[475] Another commenter on the daily reporting frequency proposal expressed concern about the significant time and expense required to collect and collate trade information, research and correct possible errors, and consult legal and other experts.[476] In addition, some commenters pointed out that the daily disclosure may raise the risk of frivolous litigation, resulting in issuers incurring legal costs to defend against such claims.[477]

In a change from the proposal, after considering the concerns of commenters about the costs of the proposed daily frequency of reporting repurchase information,[478] we are not requiring the daily frequency of reporting. We believe that preparing the disclosure of the disaggregated repurchase information on a quarterly basis for operating companies—and on a semi-annual basis for Listed Closed-End Funds—will considerably decrease the described costs to issuers of the final amendments, compared to the proposed daily reporting of disaggregated repurchase information. However, although there is not necessarily going to be a large cost impact of the final amendments on each individual issuer, we recognize that, due to the large number of repurchasing issuers (see Section V.A.1 above), the compliance costs across issuers that conduct repurchases may be considerable in the aggregate.[479]

The new disclosure of historical daily repurchase activity will be required to be filed rather than furnished. The filing requirement is expected to result in higher legal costs than the furnishing requirement, due to potential legal risk of liability under Exchange Act section 18.[480] However, because the final amendments will not require the daily reporting frequency, and because issuers will have a considerable amount of time to obtain, verify, and compile the disclosure, the costs of filing, rather than furnishing, the new disclosure should be relatively modest.

The additional quantitative repurchase disclosure will also result in indirect costs. A key indirect cost of the proposed daily reporting frequency requirement, as discussed by various commenters,[481] might have been that the disclosure may cause the stock price to rise faster than it would absent such disclosure potentially making additional repurchases more costly. The reason that daily reporting may have had this effect is that it could reveal the issuer's plans to repurchase additional stock to outside investors (to the extent repurchases are taking place over multiple months and to the extent that investors view repurchases as being driven by the issuer's positive outlook on the future stock price).[482] To the

[474] *See also* letter from Guzman (discussing adverse competitive effects on smaller financial intermediaries). However, conversely, financial intermediaries will realize benefits in the form of higher revenue if the amended disclosure requirements are followed by an increase in repurchases.

[475] *See* letter from Norfolk Southern.

[476] *See* letter from Empire.

[477] *See, e.g.,* letters from Davis Polk, Dow, and SCG. *See also, generally,* Rogers, J. & Van Buskirk, A. *Shareholder Litigation and Changes in Disclosure Behavior,* 47 J. Acct. & Econ. 136 (2009) (finding that firms reduce the level of information provided after being involved in disclosure-related class-action securities litigation cases); Bourveau, T., Lou, Y., & Wang, R. *Shareholder Litigation and Corporate Disclosure: Evidence from Derivative Lawsuits,* 56 J. Acct. Res. 797 (2018) (finding that firms issue more voluntary disclosure and increaser the length of management discussion & analysis in their 10–K filings after passage of laws that make it more difficult to file derivative lawsuits). However, one study finds that, after accounting for endogeneity, additional disclosure does not increase the risk of litigation. *See* Field, L., Lowry, M., & Shu, S., *Does Disclosure Deter or Trigger Litigation?* 39 J. Acct. & Econ. 487 (2005). As an important caveat, the study analyzes voluntary disclosure of anticipated bad earnings news rather than mandatory repurchase disclosures. Furthermore, to the extent that the disclosure raises the risk of shareholder litigation that is not frivolous, the threat of litigation may serve as a disciplinary mechanism that curtails inefficient managerial behavior. *See, generally,* Chung, C.Y., Kim, I., Rabarison, M.K., To, T.Y., & Wu, E. *Shareholder Litigation Rights and Corporate Acquisitions,* 62 J. Corp. Fin. 101599 (finding that ''reduced risk of litigation gives managers incentives to engage in value-destroying acquisitions''); Ferris, S.P., Jandik, T., Lawless, R.M., & Makhija, A. *Derivative Lawsuits as a Corporate Governance Mechanism: Empirical Evidence on Board Changes Surrounding Filings,* 42 J. Fin. & Quantitative Analysis 143 (2007) (concluding that ''shareholder derivative lawsuits are not frivolous as is often claimed, but rather that they can serve as an effective corporate governance mechanism''); Pukthuanthong, K., Turtle, H., Walker, T., & Wang, J. *Litigation Risk and Institutional Monitoring,* 45 J. Corp. Fin. 342 (2017) (concluding that ''[l]itigation is an effective monitoring device for short-term investors that substitutes for internal corporate governance'').

[478] *See supra* note 64. *But see supra* notes 70–71 and accompanying text (discussing commenters that indicated that the costs of compliance with the proposed requirements would be minimal).

[479] For example, as one commenter has noted ''SIFMA understands from feedback that there are over 500 companies that repurchase shares on an average trading day.'' *See* letter from SIFMA II.

[480] *See also* letter from NASAA (discussing concerns about private lawsuits if the daily repurchase disclosure is filed rather than furnished). *See also, generally, supra* note 477.

[481] *See supra* note 78 (referencing comment letters that discussed the front-running concern stemming from the proposed daily disclosure). However, because the final rules do not contain a daily disclosure requirement, we believe that such costs will be substantially alleviated, if not eliminated, compared to the proposal.

[482] This cost could be more pronounced for repurchases under a Rule 10b5–1(c) plan to the extent that such repurchases exhibit a greater degree of periodicity and occur over a period of time, enabling market participants to predict future

Continued

extent issuers would have incurred such a cost, other market participants, who would have otherwise been less informed about the issuer's outlook on its future share price, would have realized a benefit in that case. Several commenters also pointed to the potential for increased market volatility and investor misinterpretation of day-to-day fluctuations in issuer repurchases as potential costs of the proposed daily reporting.[483] Additional indirect costs might include inefficient changes to their repurchase programs in anticipation of potential investor scrutiny of the new disclosures.[484] In some discrete instances, granular daily disclosure reporting may also retrospectively reveal potentially sensitive information to competitors due to a pattern of recent halts of daily repurchases.[485] Because the final amendments are not implementing the proposed daily reporting frequency requirement, and are instead requiring much less frequent reporting of historical repurchase activity, we expect the described costs of the final amendments to be significantly more modest compared to the proposal. In particular, while all indirect costs of the amendments are expected to be alleviated compared to proposal, the costs of revelation of the issuer's repurchase strategy to other traders (referred to as ''front-running'' by various commenters) and competitors, as well as the costs of potential market volatility stemming from misinterpretation of daily reports of repurchase activity are expected to be largely eliminated. To the extent that the much more tailored approach to quantitative disclosures in the final amendments compared to the proposal reduces the overall compliance and indirect costs of the final amendments, in turn, the final amendments should result in far fewer inefficient reductions in share repurchases, relative to the proposal.

3. Additional Qualitative Repurchase Disclosures

The qualitative disclosure requirements will also result in costs for issuers. Issuers will incur costs to provide additional disclosure in periodic reports (including, when required, a description of the rationales and structure of the repurchase program). While issuers likely have most of the additional information readily available, these disclosures may require additional time of counsel and/or management to describe the rationales for the repurchase program, and the program's structure, in the periodic report.

The new Item 408(d) requirement for Form 10–K and 10–Q filers will also impose costs. Such costs will be lower for issuers that already disclose some information about share repurchase programs under Rule 10b5–1. Issuers are likely to have the information required by this item readily available, resulting in likely modest direct costs. In the case of multi-quarter repurchase programs with a fairly repetitive schedule of pre-planned trades, new Item 408(d) in combination with the new disclosure of historical repurchase activity and repurchase program structure, may contribute to potential revelation of detailed information about the issuer's repurchase strategy and the potential timeline of likely issuer repurchase trades to other market participants, which could result in a less favorable repurchase price, particularly in cases of repurchase programs that span multiple quarters.[486] In a change from the proposal, the amendments exclude price terms of the trading arrangement from the scope of the new disclosure, which should significantly alleviate such potential costs to issuers.

The requirement to check a box as to whether the specified officer or director purchased or sold securities in the four business days before or after a repurchase announcement will involve costs associated with collecting information from officers and directors. Such costs may be relatively modest for issuers that file on domestic forms to the extent that they can rely on the officers' and directors' section 16 filings or representations about their trading activity. However, such costs are likely to be higher for FPIs whose senior management and directors are not subject to section 16.

The amended disclosure requirements may also impose costs on corporate insiders. In particular, the requirement that issuers publicly disclose whether they have policies and procedures related to purchases and sales by officers and directors during repurchases, as well as the disclosure of whether certain officers or directors purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within four business days before or after the issuer's announcement of such repurchase plan or program, may cause issuers to increasingly adopt such restrictions in anticipation of the market scrutiny following such disclosure.[487]

repurchases to a greater extent based on historical daily data. However, such investors may benefit from being able to purchase securities before the issuer completes the repurchase program, potentially at a lower price than they would have otherwise.

[483] *See supra* notes 450–451 and accompanying text. In addition, as other commenters point out, an issuer's halt of repurchases due to a material undisclosed event or confidential merger discussions may trigger significant market volatility and potentially derail such confidential discussions. *See supra* notes 80–81 and accompanying text.

[484] *See, e.g.,* letters from SIFMA II and Sullivan (noting that some issuers may continue daily repurchases when it does not make financial sense to do so, to mitigate the consequences of daily disclosure). Other issuers may bunch large repurchases into a compressed time period may experience greater price impact from large trades. *See, e.g.,* letter from DLA Piper (stating that the proposed daily disclosure could discourage more efficient daily repurchases and lead issuers to undertake less efficient periodic repurchases). *See also* letters from Chevron and Davis Polk, which note that the proposed daily disclosure requirement might have led issuers to follow the more costly practice of effecting larger repurchases on fewer days. *See also supra* note 90 and accompanying text (discussing commenter concerns that the proposed daily disclosure requirement might, in turn, have led issuers to limit their average daily repurchase trading volume to try to ensure that sophisticated investors view the daily trades as immaterial, even if a larger volume would be more beneficial to shareholders). With the important caveat about the difficulty of extrapolating inference about repurchases across international market settings, the limited available evidence does not point to the prevalence of such bunching in at least one active trading market with daily reporting of repurchases (the U.K.). *See, e.g.,* Kulchania, M., & Sonika, R. *Flexibility in Share Repurchases: Evidence from* UK, 29 Eur. Fin. Mgmt. 196 (2023).

[485] *See supra* note 81 and accompanying text (discussing letters from commenters concerned about potential information leakage of confidential merger negotiations or another similar material undisclosed event, particularly, if both the prospective target and the prospective acquirer have halted previously regular repurchases). We believe that such information leakage concerns are not likely to be a substantial cost on most issuers, given the most probable repurchase strategy scenarios. To the extent such concerns may apply, they could be alleviated, for example, by indicating in the initial repurchase program announcement that the issuer plans to repurchase shares intermittently, or by making very minor modifications to the repurchase strategy that deviate from a completely predictable trading schedule while the program is being executed.

[486] *See supra* note 345 and accompanying text. However, there is some evidence that even the revelation of large predictable planned trades may not result in such effects. *See* Bessembinder, H. *et al., Liquidity, Resiliency and Market Quality Around Predictable Trades: Theory and Evidence,* 121 J. Fin. Econ. 142 (2016) (showing, in a setting with large and predictable exchange-traded fund trades, that ''traders supply liquidity to rather than exploit predictable trades in resilient markets'' and not finding ''evidence of the systematic use of predatory strategies'').

[487] *See, e.g.,* letter from PNC (expressing concern that the requirement to disclose policies and procedures relating to trading by officers and directors during a repurchase program could create an expectation that issuers must have such policies) and letter from Quest (expressing concern that it may end up either having to restrict officers and directors from trading during share repurchases, or consider the impact on officers and directors when scheduling its repurchases). Any restrictions an issuer imposes on officer and director trading, for

This disclosure requirement may impose reputational costs or draw additional scrutiny to officers or directors that engaged in selling around repurchase announcements, discouraging such selling. The incremental costs of this disclosure requirement to corporate insiders of many issuers that file on domestic forms are generally likely to be small [488] to the extent the investors can already obtain the same information from beneficial ownership disclosures and public announcements of repurchases. However, as some commenters indicated, there may be potential for misinterpretation that could follow from the checkbox disclosure, whereby investors draw conclusions about insider trading activity occurring in proximity to repurchase activity that are inaccurate.[489] The costs may be higher for senior management and directors of FPIs that do not have a section 16 reporting obligation. In a change from the proposal, after considering commenter concerns about the checkbox disclosure, we are limiting the checkbox disclosure to insider trading within four business days, rather than ten business days, before and after the repurchase announcement. By focusing the disclosure on a narrower time frame more specific to the repurchase announcement, this change is expected to reduce some of the costs of the disclosure to issuers and insiders, relative to the proposal.

To the extent that the requirement to disclose whether any officer or director has purchased or sold securities around the repurchase announcements leads some companies to forgo making a repurchase announcement to limit market scrutiny, the amount of information available to investors about companies' forward-looking repurchase plans may decrease. Importantly, the described costs are likely to be small in the case of many issuers that file on domestic forms [490] to the extent that investors can already readily obtain the same information by combining beneficial ownership disclosures of officer and director trades with public announcements of repurchases.

4. Inline XBRL

The requirement to use a structured data language for reporting the newly required disclosures will impose incremental compliance costs on issuers.[491] Such costs are expected to be modest as issuers affected by the amendments (including SRCs and FPIs) already are required to use Inline XBRL to comply with other disclosure obligations. Moreover, the scope of the disclosures required to be reported using a structured data language is limited and thus will require a relatively simple taxonomy of additional tags, minimizing initial and ongoing costs of complying with the new tagging requirement.

D. Efficiency, Competition, and Capital Formation

On balance we expect that the final amendments may have positive overall effects on efficiency, competition, and capital formation. In particular, a decrease in the information asymmetry between issuers and investors about the value of an issuer's securities as a result of the disclosure may lead to more informationally efficient prices, and more efficient capital allocation in investor portfolios.[492] The decrease in information asymmetry among investors can alleviate adverse selection costs and improve stock liquidity. Decreased information asymmetries between investors and issuers as a result of the enhanced disclosure under the amendments may also incrementally facilitate capital formation and reduce the cost of capital.[493] Further, by enabling public disclosure of additional repurchase information, the amendments may result in information being more fully incorporated into share prices, and therefore, more informationally efficient share prices. Taken together, the final rules may contribute to more efficient allocation of capital, capital formation, competition, and the maintenance of fair and orderly markets. Some commenters on the daily reporting proposal [494] asserted that daily repurchase disclosure furnished one business day after an issuer repurchase may contain considerable noise, which may lead some investors to draw inaccurate inferences, reducing these information benefits and potentially leading to increased volatility and speculative trading. This consideration is more likely to be pronounced for issuers with a less sophisticated investor base. As discussed in Section V.C.2 above, because the final amendments are not implementing the daily reporting frequency requirement, we believe that these concerns are likely to be substantially alleviated, if not fully addressed, under the final amendments.

To the extent that the amended requirements affect smaller issuers to a greater extent than larger issuers, they could result in adverse effects on competition.[495] The fixed component of the legal costs of preparing the disclosure could be one contributing factor.[496] The lower liquidity of smaller issuers' securities,[497] which may

instance, in anticipation of investor scrutiny of the new disclosures, could also limit the ability of corporate insiders to purchase or sell securities at issuers that conduct repurchases periodically over an extended period of time (such as open market repurchases under a multi-quarter program, or a Rule 10b5–1 plan). To the extent any such restrictions limit insider sales, they may decrease the liquidity of insiders' holdings of an issuer's securities.

[488] Officers and directors of FPIs are not subject to section 16 reporting obligations and would therefore incur higher costs.

[489] *See supra* note 284 and accompanying and following text (discussing commenter concerns about misinterpretation of the checkbox disclosure).

[490] *See supra* note 464.

[491] *See* letter from NYC Bar (expressing concern regarding the ''unnecessary and significant'' compliance costs and complexity that would result from the Inline XBRL requirement). *See also* letter from VEUO (stating, with respect to foreign private issuers, that the structured data requirement would be an additional and unnecessary burden for such issuers).

[492] *But see supra* note 445.

[493] As discussed above, the final rules are expected to reduce information asymmetry between investors and repurchasing issuers, which can reduce investors' uncertainty about estimated future cash flows, thus lowering the risk premium they demand and, potentially, issuer cost of capital. *See, e.g.,* Easley and O'Hara (2004); Botosan, C., *Disclosure and the Cost of Capital: What Do We Know?,* 36 Acct. & Bus. Res. 31 (2006) (stating that ''[t]he overriding conclusion of existing theoretical and empirical research is that greater disclosure reduces cost of capital''); Lambert, R., Leuz, C., & Verrecchia, R., *Accounting Information, Disclosure, and the Cost of Capital,* 45 J. Acct. Res. 385 (2007) (showing, in a conceptual framework, that ''increasing the quality of mandated disclosures should in general move the cost of capital closer to the risk-free rate'' and ''generally reduce the cost of capital for each firm in the economy'' and further noting that ''the benefits of mandatory disclosures are likely to differ across firms.''); *Accelerated Filer and Large Accelerated Filer Definitions,* Rel. No. 34–88365 (Mar. 12, 2020) [85 FR 17178 (Mar. 26, 2020)], at 17215, note 477. As a caveat, while the cited examples relate to disclosure and cost of capital, they examine other disclosure contexts (not the frequency of share repurchase reporting), as pointed out by a commenter. *See* letters from Chamber II and Profs. Lewis and White.

[494] *See supra* notes 79–81.

[495] *See, e.g.,* letters from ACCO and Profs. Lewis and White. *See also* letter from Guzman (stating that the proposed disclosures could negatively affect competition in the financial services sector by inducing issuers to use larger intermediaries instead of smaller financial firms).

[496] In the case of funds, while we expect larger Listed Closed-End Funds and business development companies, or funds that are part of a large fund complex, to incur higher costs related to final amendments in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we expect a smaller fund to find it more costly, per dollar managed, to comply with the final amendments because it would not be able to benefit from a larger fund complex's economies of scale.

[497] *See, e.g.,* Amihud, Y. & Mendelson, H., *Liquidity and Stock Returns,* 42 Fin. Analysts J. 43 (1986) (noting that ''[t]he stocks of small firms suffer from market 'thinness,' which impairs their liquidity''.); Duarte, H. & Young, L., *Why is PIN priced?* 91 J. Fin. Econ. 119 (2009) (in Table 6, showing that larger firm size is correlated with higher liquidity based on different measures);

Continued

exacerbate the price impact of the new disclosure, may also contribute to disproportionate effects of the disclosure on smaller issuers. The latter effect could be mitigated by the lower incidence, and the lower average level (relative to issuer size), of repurchases among smaller issuers.[498] To the extent that the quarterly reporting of repurchases for FPIs that file on Form 20–F is a significant additional cost [499] for such issuers as they do not file quarterly reports with the Commission, such costs may discourage some foreign issuers from listing in the U.S. market, resulting in adverse effects on competition. Compared to the proposal, the much lower frequency of reporting of additional disaggregated repurchase information is expected to significantly reduce the compliance and indirect costs of the disclosure requirements in the final amendments. As a result, to the extent that smaller filers would have incurred a disproportionate impact of the new disclosures, this change will also reduce the potential negative effects of the amendments on competition, compared to the proposal.

As discussed in Section V.C.1 above, a potential indirect cost of the amended disclosure requirements is the possibility that issuers inefficiently decrease repurchases. Further, to the extent that repurchases currently contribute to more informationally efficient prices and greater liquidity,[500] any inefficient reduction in repurchases in response to the amended disclosure requirements will result in the indirect costs of decreased price efficiency (partly offset by the information benefits of the new disclosures) and decreased liquidity. We have discussed mitigating factors for these effects in detail in Section V.C.1 above. As discussed in Section V.C.1 above, we also believe that the change to the frequency of reporting the disaggregated repurchase information is likely significantly alleviate these concerns, compared to the proposal.

E. Reasonable Alternatives

1. Alternative Reporting Frequencies and Disclosure Granularity

In a change from the proposal, the final amendments require corporate issuers that file on domestic forms that engage in share repurchases to report information on repurchases conducted during each quarter, disaggregated on a day-by-day basis, as suggested by two commenters.[501] Relatedly, we are requiring FPIs not reporting on domestic forms to report the same share repurchase information on Form F–SR. Listed Closed-End Funds that report on Form N–CSR will be required to report the information on repurchases, similarly disaggregated on a day-by-day basis, on a semi-annual basis. As an alternative, we could require issuers to report repurchase activity disaggregated on a less granular basis—such as biweekly basis, as suggested by one commenter,[502] or weekly basis, as suggested by other commenters.[503] Compared to the final amendments, this alternative would decrease direct and indirect issuer costs associated with the amended disclosure requirements, as discussed in greater detail in Section V.C above. In turn, it would also reduce the information benefits of the disclosure to investors, discussed in greater detail in Section V.B above, compared to the final amendments. The net effects would be smaller if the daily repurchase trading has relatively little incremental information content compared to the more aggregated—weekly or bi-weekly—totals (*e.g.,* exhibits relatively little variation from day to day in repurchase volumes and prices), if existing market data is sufficiently informative about likely issuer repurchases (due to price impact of large repurchases, even absent disclosure), or if investors are unable to accurately parse historical repurchase data disaggregated on a daily basis (*e.g.,* due to noise, as suggested by some commenters [504]).

As another alternative, we could adopt a more frequent repurchase reporting requirement—for example, a daily reporting frequency requirement, as proposed,[505] a weekly reporting frequency requirement,[506] or a monthly reporting frequency requirement.[507] Compared to the final amendments, requiring more frequent reporting would provide investors with less delayed information about issuer repurchases and potentially enable them to perform a more timely evaluation of an issuer's repurchase activity, independently or in conjunction with other disclosures. This alternative may enable investors that trade based on short-term information to construct a potentially better informed trading strategy, as well as gauge more quickly the extent to which recent repurchases, conducted at a specific point in time, were likely to be aligned with shareholder value maximization. Such effects would be larger if the alternative disclosure frequency is higher and/or if the repurchase information is of a time-sensitive nature. In turn, more frequent reporting, particularly, the daily reporting frequency, would dramatically increase issuer costs, including compliance costs, front-running risks, indirect costs due to potentially inefficient decrease in repurchases, and other costs discussed in detail in Section V.C above, compared to the final amendments and the baseline, as noted by various commenters.[508]

As another alternative, we could adopt a combination of alternative reporting frequency and an alternative level of disaggregation of the reported data. For example, we could require reporting of monthly repurchase activity information on a monthly basis, as suggested by various commenters.[509] The costs and benefits of this alternative, compared to the final amendments, would be determined by the tradeoffs described above with respect to the greater timeliness of information as well as a lower level of granularity of repurchase data.

2. Alternative Scope of the Disclosure

We could modify the scope of the amended disclosure, for instance, omitting information about the use of Rule 10b–18 and/or Rule 10b5–1 in the

Collver, C., *A Characterization of Market Quality for Small Capitalization US Equities,* September 2014, *available at https://www.sec.gov/files/marketstructure/research/small_cap_liquidity.pdf* (2014) (finding that ''[s]mall cap stocks had larger quoted and effective spreads and traded much lower volumes than mid cap stocks'' and that ''[l]iquidity improved with market capitalization'').

[498] *See, e.g.,* Dittmar, A., *Why Do Firms Repurchase Stock,* 73 J. Bus. 331 (2000) (finding that ''large firms are the dominant repurchasers''); Cheng et al. (2015) (showing in Table 2 that repurchasing firms are significantly larger than nonrepurchasing firms); Jiang, Z., Kim, K.A., Lie, E., and Yang, S., *Share Repurchases, Catering, and Dividend Substitution,* 21 J. Corp. Fin. 36 (2013) (showing in Table 5 that firm size is positively related to the fraction of outstanding share purchases by firms on a monthly basis).

[499] FPIs may file current reports with the Commission on a more frequent basis. Further, some FPIs already are subject to more granular repurchase reporting requirements in their home jurisdiction, in which case their incremental cost of complying with the final amendments may be lower than for domestic issuers.

[500] *See supra* note 433.

[501] *See supra* notes 110–111.

[502] *See* letter from Home Depot.

[503] *See, e.g.,* letters from BrilLiquid, Guzman, Hecht, and Pentacoff.

[504] *See supra* notes 483–484 and accompanying text.

[505] *See supra* note 65.

[506] *See supra* note 116.

[507] *See supra* notes 113 (supporting monthly reporting of daily data), 114 (proposing, among various alternatives, monthly reporting of biweekly data), and 115 (recommending monthly reporting of monthly aggregate historical repurchase activity).

[508] *See supra* notes 481 (discussing front-running costs) and 484 (discussing potential for inefficient efforts to restructure repurchase programs in an attempt to minimize the effects of front-running and price impact of the daily reporting) and accompanying text.

[509] *See supra* note 115.

new quantitative disclosure,[510] information about the objectives and rationales for repurchases,[511] information about issuer trading plans in new Item 408(d), or information about any policies and procedures relating to purchases and sales of the issuer's securities by officers and directors during repurchases, including any restrictions on such transactions.[512] Compared to the final amendments, narrowing the scope of the required disclosure would reduce the costs to issuers. However, this alternative would also provide less information to investors and result in potentially greater information asymmetry, compared to the final amendments. As another alternative, we could expand the scope of the amended disclosure, for instance, requiring additional disclosure in periodic reports about how issuers are financing their share repurchases, as suggested by some commenters.[513] Compared to the final amendments, broadening the scope of the required disclosure would increase the costs to issuers. However, this alternative could also on the margin provide additional information to investors, compared to the final amendments. The information benefit would depend on whether investors already are able to infer the additional information from other financial statement disclosures and MD&A discussion. For example, some investors may be able to use existing financial statement disclosures to infer whether debt or other sources of funds were used for share repurchases.

3. Exemptions for Certain Issuer Categories

We could provide exemptions from all, or some, of the amended disclosure requirements, or modify the disclosure requirements, for SRCs.[514] As another alternative, we could require only the reporting of repurchases that exceed a certain threshold, such as one or two percent of the number of shares outstanding,[515] or provide a principles-based exemption from the additional disclosure requirements for repurchases that are not material.[516] These alternatives could reduce the aggregate costs of the rule but also reduce the information available to investors, compared to the final amendments. The economic effects of the alternative of excluding small filers are uncertain to the extent that the effects of the amended disclosure on small issuers are somewhat ambiguous. On the one hand, smaller issuers are more likely to be affected by the costs of additional disclosure, all else equal (holding constant the disclosure burden). On the other hand, smaller issuers are less likely to have repurchases,[517] which limits the incremental burden (as well as the incremental benefits) of additional reporting under the amendments for each small filer. Further, to the extent that small filers have relatively high information asymmetries because of lower analyst and institutional coverage, disclosure about their repurchases may be relatively more informative to investors.[518]

As another alternative, we could provide exemptions or different requirements for FPIs not reporting on domestic forms,[519] Listed Closed-End Funds,[520] or issuers without an established securities market.[521] These alternatives would eliminate or reduce the costs for the affected issuers but also reduce the information benefits for investors in these issuers, compared to the final amendments. For example, as suggested by commenters, not all of the motivations for corporate issuers' share repurchases will apply to Listed Closed-End Funds because of differences in the business model and organizational structure of a fund as compared to a corporate issuer.[522] We believe, however, that investors would benefit from receiving timely details about a fund's repurchase activity so they can make an informed decision as to whether the fund's share price has been influenced by this repurchase activity, which is difficult to do without the daily details the final amendments will provide.

Additionally, exempting FPIs reporting on FPI forms would prevent the affected issuers from incurring the cost of multiple, different layers of repurchase disclosures (and in some cases, on the margin potentially adding to the burden of U.S. disclosure requirements that can discourage a U.S. listing). However, it would also reduce the amount of information available to investors, potentially reducing their ability to make informed investment decisions, compared to the final amendments.[523] Further, exempting such issuers may place them at a relative competitive advantage to issuers subject to the new disclosure requirements. Ultimately, the aggregate effects of exempting these categories of issuers may be incremental as such issuers engage in relatively fewer repurchases than domestic issuers, as seen in Section V.A.1 above.

Relatedly, exempting unlisted issuers or issuers without any established securities market more generally would eliminate the costs of the amendments for such issuers.[524] Nevertheless, investors in such issuers would lose the information benefits of the additional disclosures, which might be relatively more consequential for investors in issuers with a thin trading market or without a trading market that lack the price discovery from active trading. The discussion of the alternative of exempting small issuers also pertains to unlisted issuers or issuers without an established securities market to the extent that such issuers tend to be smaller companies.

As another alternative, suggested by some commenters,[525] we could exempt bank holding companies from the amended disclosure requirements. Under this alternative, banks would not incur the costs of the amendments discussed in Section V.C above (including the cost of potentially divulging confidential information).[526] The incremental effect on bank investors may be smaller to the extent that banks' use of capital is subject to significant regulatory oversight and banks already disclose more capital and capital planning information than other

[510] *See supra* note 150. *But see supra* notes 146–149.

[511] *See supra* note 248.

[512] *See, e.g.,* letter from PNC (expressing concern that ''such disclosure requirements are often seen as creating an expectation that well-managed companies should have such policies and procedures'').

[513] *See, e.g.,* letters from Senators Rubio & Baldwin, CalPERS, Prof. Palladino, Roosevelt, AFREF *et al.,* Better Markets, and CFA Institute.

[514] *See supra* notes 131–135.

[515] *See supra* notes 101–104. *See also* letter from ABA Committee (recommending a higher, five percent, trigger for SRCs).

[516] *See also, e.g.,* letter from Cravath (recommending that a share repurchase plan that is not material not be required to be disclosed publicly on periodic reports).

[517] *See supra* notes 134–135 and accompanying text.

[518] *See also supra* note 129 (discussing comment letters that recommended not exempting smaller issuers from the amendments).

[519] *See supra* note 122.

[520] *See supra* note 140 and accompanying text.

[521] *See supra* note 136 and accompanying text.

[522] *See supra* note 140 and accompanying text.

[523] *See also supra* note 123 and accompanying text (discussing comment letters that supported the benefits of extending the amendments to foreign private issuers).

[524] *See* letter from Publix. Based on staff analysis of section 12(b) registration status data on issuers with an exchange-listed class of securities and of Over-the-Counter (''OTC'') Markets' data on OTC quotation for 2021, we estimate that an established securities market cannot be identified for approximately 500 out of 7,500 affected filers of Forms 10–Q, 10–K, or 20–F and for approximately 100 out of 3,600 issuers that undertook repurchases. *See also supra* notes 374 and 376.

[525] *See supra* note 140.

[526] *Id.*

issuers.[527] Nonetheless, we believe that information about issuer repurchases under the final amendments is valuable for addressing information asymmetries between banks and their investors. Under this alternative, bank investors would receive significantly less information about issuer repurchases, compared to the final amendments.

4. Alternative Implementation Approaches

We could modify some of the elements of implementation of the amended disclosure requirements. The final amendments require daily repurchase data to be reported periodically (as an exhibit to Forms 10–Q and 10–K, on Form N–CSR, and for FPIs reporting on FPI forms, on new Form F–SR). As one alternative, we could require all issuers, rather than only FPIs, to report the historical daily repurchase information on a new form. By introducing a new form for all issuers, this alternative could incrementally increase the initial transition costs, compared to the final amendments. On balance, this alternative is unlikely to impact ongoing disclosure costs, compared to the final amendments, holding the scope and frequency of the required disclosure constant. However, in the case of Listed Closed-End Funds, such an alternative would require more frequent—quarterly, rather than semi-annual—reporting of historical daily repurchase data resulting in timelier disclosure of such information to investors and higher direct and indirect costs of reporting (described in greater detail in Section V.C. above) for affected issuers, compared to the final amendments. Compared to corporate issuers, relatively few funds engage in share repurchases, as discussed in Section V.A.1 above. Thus, the aggregate costs and benefits of such an alternative for affected fund issuers are likely to be modest.[528] As another alternative, we could require issuers that file on Forms 10–K and 10–Q to provide the same historical daily repurchase disclosure in the body of the form, rather than in an exhibit. Moving the disclosure from the exhibit to the body of the form is not expected to affect the costs for issuers or informational benefits to investors, conditional on the contents of the disclosure requirements remaining the same. In cases of issuers with more daily repurchases to be disclosed, the increase in the length of the main body of the periodic report under this alternative could make the periodic report somewhat less readable to investors (especially those investors not specifically seeking daily repurchase data), compared to the final amendments.

We are eliminating the existing requirement to provide monthly breakdowns of repurchase activity in periodic reports. As an alternative, we could retain this requirement. The costs and benefits of this alternative compared to the final amendments are similarly likely to be fairly incremental because the aggregation of daily information into a monthly breakdown is likely to be low-cost for filers, and of relatively little incremental importance to investors.

As another alternative, we could require that issuers announce all share repurchase plans in advance, as suggested by a few commenters.[529] Under this alternative, investors may benefit from additional information related to the issuer's future repurchase plans. The incremental benefit of the requirement may be limited for issuers that already routinely disclose repurchase announcements—under exchange listing standards, companies are required to promptly disclose material new developments, and, according to at least one law firm, board authorization of a buyback is generally treated as requiring disclosure under these standards.[530] However, such an alternative would ensure greater consistency, particularly among non-exchange-listed issuers, in the information being made available to investors about an issuer's future repurchase plans. As discussed in Section V.A. above, the authorization of a repurchase program can indicate the issuer's belief that the stock is undervalued or convey other value-relevant information to investors. At the same time, to the extent that issuers that do not presently pre-announce repurchase programs avoid such announcements because such announcements would be costly for them—for instance, by effecting a greater degree of upward price pressure than subsequent periodic reporting of repurchase activity, and therefore increasing the price of the purchased shares—this alternative would impose greater cost on such issuers (and their existing shareholders that do not sell during a repurchase program), compared to the final amendments.

5. Structured Disclosure

As another alternative, we could scale the structured disclosure requirements compared to the amendments, for instance, by not requiring that the quantitative disclosure in periodic reports, or the narrative disclosure, be structured. These alternatives could incrementally increase the cost of the extraction and analysis of additional information about the structure and purpose of repurchase programs, compared to the final amendments. At the same time, the incremental cost savings for issuers, compared to the final amendments, would likely be modest since affected filers already tag various other disclosures in their filings with the Commission.[531]

6. Compliance Dates

FPIs that file on FPI forms will be required to comply with the new disclosure requirements in the first filing that covers the first full fiscal quarter that begins on or after April 1, 2024; Listed Closed-End Funds—in the first filing that covers the first fiscal period that begins on or after January 1, 2024; and all other issuers—in the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023. As an alternative, we could provide a longer transition period (for example, for up to one year after the effective date of the final rules), as suggested by some commenters.[532] Under this alternative, the costs and benefits of the final amendments discussed above would be deferred until the compliance date. Further, to the extent that affected issuers and intermediaries that assist them with the execution of repurchase programs require some time to implement new systems, processes, and policies to gather information for the new disclosures, the alternative could further incrementally mitigate some of the initial transition challenges and associated burden, by enabling affected issuers to do so with fewer time pressures.

VI. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules and forms that will be affected by the final

[527] *Id.*

[528] *See also supra* note 140 and accompanying text (discussing potentially smaller benefits for funds).

[529] *See, e.g.,* letters from CFA Institute; CalPERS; BrilLiquid; and ICGN.

[530] *See SEC Proposes Rules to Modernize Share Repurchase Disclosures,* Wilmer Hale (Dec. 27, 2021), *https://www.wilmerhale.com/insights/client-alerts/20211227-sec-proposes-rules-to-modernize-share-repurchase-disclosures.*

[531] *See* 17 CFR 232.405(b) (setting forth structured disclosure requirements for, *inter alia,* corporate issuers and closed-end management investment companies).

[532] *See, e.g.,* letters from SIFMA II; Sullivan; Wilson Sonsini.

amendments contain ''collection of information'' requirements within the meaning of the PRA.[533] The Commission published notices requesting comment on revisions to these collections of information requirements in the Proposing Release and the Rule 10b5–1 Proposing Release, and it has submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[534] The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- ''Form 10–K'' (OMB Control No. 3235–0063);
- ''Form 10–Q'' (OMB Control No. 3235–0070);
- ''Form 20–F'' (OMB Control No. 3235–0288);
- ''Form N–CSR'' (OMB Control No. 3235–0570); and
- ''Form F–SR'' (a new collection of information).

We adopted the existing forms pursuant to the Exchange Act and Investment Company Act, and are adopting the new form pursuant to the Exchange Act. The forms set forth the disclosure requirements for periodic reports filed by issuers to help investors make informed investment and voting decisions. A description of the final amendments, including the need for the information and its use, as well as a description of the likely respondents, may be found in Sections I, II, and III above, and a discussion of the economic effects of the proposed amendments may be found in Section V above.

B. Summary of Comment Letters

In the Proposing Release, the Commission requested comment on the PRA burden hour and cost estimates and the analysis used to derive such estimates. One commenter directly addressed the PRA analysis of the proposed amendments,[535] and other commenters provided responses to certain requests for comment that have informed some of our PRA estimates.[536] Generally, these commenters asserted that the costs and burdens of the proposed amendments would likely be greater than what the Commission estimated in the Proposing Release.

In the Rule 10b5–1 Proposing Release, the Commission similarly requested comment on the PRA burden hour and cost estimates and the analysis used to derive the estimates in that release. We did not receive any comments that directly addressed the PRA analysis of those proposed amendments. However, as noted in the Rule 10b5–1 Adopting Release, we made some changes to proposed Item 408(a) as a result of comments received in response to the Rule 10b5–1 Proposing Release and revised our estimates, taking into account the changes and the comments received. New Item 408(d) that we are adopting in this release reflects corresponding changes.

C. Summary of Collections of Information Requirements

As discussed in more detail in the Proposing Release [537] and the Rule 10b5–1 Proposing Release,[538] we derived the burden hour estimates by estimating the change in paperwork burden as a result of the amendments. As noted in Section III, we have made some changes to the proposed amendments as a result of comments received, and have revised our PRA estimates to take into account these changes.

1. Estimated Paperwork Burden for Daily Quantitative Share Repurchase Disclosures

In the Proposing Release, we estimated a burden of 1.5 hours for each proposed Form SR, which would include the effects of compiling the required data elements for each date that the form would be required, tagging the data using Inline XRBL, and preparing and submitting the form. Although the final amendments require the same additional detail regarding the structure of an issuer's repurchase program and its daily share repurchases as in the Proposing Release, the frequency and manner of the disclosure is different from the proposal. Instead of requiring issuers to provide quantitative daily repurchase disclosure on a new Form SR one business day after execution of an issuer's share repurchase order, as proposed, the final amendments require issuers to provide quantitative daily repurchase disclosure on a less frequent periodic basis.[539]

The final amendments require corporate issuers reporting on domestic forms and Listed Closed-End Funds to file daily aggregated repurchase data in their periodic reports, and FPIs filing on the FPI forms to file daily aggregated repurchase data quarterly on new Form F–SR. The repurchase data is to be tagged using Inline XBRL.[540] The final amendments require disclosure of a potentially greater quantity of repurchase data in the particular periodic filing (repurchases over a quarterly or six-month period, depending on the filer) than would have been required under proposed Form SR, which would have only included the repurchases from one day.[541] In consideration of these changes, we are estimating the burden hours for the daily quantitative share repurchase disclosure to be 5.0 hours.

We recognize that the burden hours may be higher or lower depending on the number of applicable repurchases that the issuer conducts in the period covered by the form. These adjustments will be reflected on Forms 10–Q, 10–K, N–CSR, and F–SR.[542] Because any disclosure under the final amendments would be made quarterly or semi-annually, depending on the filer type, rather than daily, in total we estimate that the burdens and costs of the final amendments should be lower than for the proposed amendments.[543]

[533] *See supra* note 469.

[534] *See* 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[535] *See* letter from Empire.

[536] *See, e.g.,* letters from Norfolk Southern and SIFMA II.

[537] *See* Section V of the Proposing Release, *supra* note 2.

[538] *See* Section V of the Rule 10b5–1 Proposing Release, *supra* note 17.

[539] The final amendments require domestic corporate issuers and FPIs filing on the FPI forms to file their information quarterly in their Form 10–Q and Form 10–K (for an issuer's fourth fiscal quarter) and new Form F–SR, respectively, and Listed Closed-End Funds to file that information semi-annually in Form N–CSR.

[540] Any burdens associated with interactive data associated with the final amendments are estimated to be negligible. For administrative simplicity, these burdens therefore are incorporated into the burdens associated with the forms, discussed below.

[541] We recognize that, for issuers to prepare monthly repurchase data under the current disclosure requirement, they may already be collecting daily repurchase data. As a result, they may already have the systems or processes in place to collect or report some of the repurchase data, which they may be able to leverage for the new disclosure and may mitigate some of the burdens.

[542] We also estimate a burden of 1.0 hour to submit new Form F–SR. The other forms are existing forms that already reflect a submission burden.

[543] We believe the costs for issuers will be lower on an annual basis because issuers will be required to provide this disclosure a maximum of four times per year for domestic corporate issuers and FPIs, and a maximum of two times per year for registered-closed end funds. The proposed amendments would likely have required issuers to provide significantly more forms per year at a greater cost than the final amendments because the proposed amendments would have required issuers

Continued

Additionally, issuers are required currently to file monthly aggregated repurchase data in their periodic reports. We are eliminating this requirement. Accordingly, for PRA purposes, we estimate a reduction in costs and burdens associated with this requirement of 2.0 hours. These adjustments will be reflected in Forms 10–K, 10–Q, N–CSR, and 20–F.

Our estimates are for the average burden over the first three years of reporting.[544] The following table summarizes the estimated paperwork burden associated with the final amendments' required daily quantitative repurchase disclosures for issuers of equity securities registered under section 12 of the Exchange Act in existing Forms 10–K, 10–Q, and N–CSR, and in new Form F–SR and the elimination of the monthly repurchase disclosures in Forms 10–K, 10–Q, N–CSR, and 20–F.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN OF DAILY QUANTITATIVE SHARE REPURCHASE DISCLOSURES AND ELIMINATION OF MONTHLY REPURCHASE DISCLOSURES

Affected forms	Estimated burden	Brief explanation of estimated burden
Form 10–K, Form 10–Q, Form N–CSR.	An increase of 5.0 burden hours for each affected form.	This estimated burden includes the estimated 5.0-hour burden for the compilation of the data elements, tagging the data using Inline XBRL, and preparing the exhibit (in Form 10–K and 10–Q) or table (in Form N–CSR).
Form F–SR	6.0 burden hours for each affected form	This estimated burden includes the estimated 5.0-hour burden for the compilation of the data elements, tagging the data using Inline XBRL, and preparing the form, plus a 1.0-hour burden for submitting the Form F–SR.
Form 10–K, Form 10–Q, Form N–CSR, Form 20–F.	A decrease of 2.0 burden hours for each affected form.	This estimated burden reduction reflects the elimination of the monthly aggregated repurchase data.

We estimate that the new daily quantitative repurchase disclosure requirements will change the paperwork burden for filings on the affected periodic disclosure forms that include share repurchase disclosure. However, not all filings on the affected forms will include these disclosures because the disclosures are required only when an issuer conducts a share repurchase. Based on staff analysis of data from Compustat and EDGAR filings for fiscal year 2021,[545] we estimate that the daily quantitative repurchase disclosure requirements in the final amendments will affect approximately 3,300 domestic corporate issuers, 300 FPIs, and 100 Listed Closed-End Funds.

Additionally, we note that most issuers that conduct share repurchases do so over a period of time, rather than by making a single purchase or a few isolated purchases during the year. Therefore, for purposes of this PRA analysis, we assume that the daily quantitative repurchase disclosures will be distributed evenly throughout an issuer's fiscal year. As a result, we estimate that, annually, the required daily quantitative repurchase disclosure will be included in one Form 10–K and three Form 10–Qs for each affected corporate issuer filing on domestic forms, four Form F–SRs for each affected FPI, and two Form N–CSRs for each affected Listed Closed-End Fund. Based on the staff's findings, the table below sets forth our estimates of the number of filings on these forms that include share repurchase disclosure.[546]

PRA TABLE 2—ESTIMATED NUMBER OF AFFECTED FILINGS

Issuer type	Number of issuers affected by the repurchase disclosure annually (A)	Forms that include share repurchase disclosure (B)	Current annual responses in PRA inventory (C)	Number of forms that include share repurchase disclosure annually per issuer (D)	Number of filings that include share repurchase disclosure annually per form (E) = (A) × (D)	Increase in burden hours for daily quantitative share repurchase disclosures per form, (F) = (E) × 5.0 [Forms 10–K, 10–Q, N–CSR] or 6.0 [Form F–SR]	Decrease in burden hours for daily quantitative share repurchase disclosures per form (G) = (E) × 2.0 [Forms 10–K, 10–Q, 20–F, N–CSR]
Corporate Issuer Reporting on Domestic Forms.	3,300	10–K	8,292	1	3,300	16,500	(6,600)
		10–Q	22,925	3	9,900	49,500	(19,800)
FPI	300	F–SR	0	4	1,200	7,200	
		20–F	729	1	300		(600)
Registered Closed-End Fund	100	N–CSR	6,898	2	200	1,000	(400)

to provide proposed Form SR one business day after execution every one of an issuer's share repurchase orders. See letter from SIFMA II (''Additionally, time and cost implications should also be considered. The 1.5 hours per day preparation time estimated by the SEC quickly turns into 7.5 hours a week, or more for those who are in the market daily, for the duration of the share repurchase plan.'').

[544] We acknowledge that final amendments may initially entail a higher burden as issuers get accustomed to collecting data for, and preparing, the form. We believe, however, that the burden will be reduced with subsequent filings.

[545] *See supra* Section V.A.1.

[546] We used this data to extrapolate the effect of these changes on the paperwork burden for the listed periodic reports. The OMB's PRA filing inventories represent a three-year average, which may not align with the actual number of filings in any given year.

2. Estimated Paperwork Burdens of the Narrative Share Repurchase Disclosures in Item 703 of Regulation S–K, Form 20–F, Form N–CSR, and Form F–SR

As discussed in Section III.B.3., the modifications in the final amendments from the proposed amendments relating to the narrative disclosures in Item 703 of Regulation S–K and Form N–CSR are generally limited to clarifying certain aspects of the proposed amendments. Therefore, because the substantive requirements for those disclosures is the same, our PRA estimate is the same as the PRA estimate in the Proposing Release. As a result, we continue to estimate a burden of 3.0 hours for each form for all the narrative disclosures in Item 703 of Regulation S–K and Form N–CSR. We estimate those 3.0 hours to consist of 0.5 hours for the checkbox and 2.5 hours for the remaining narrative disclosures.

However, in a change from the proposal, the final amendments require FPIs to include one part of their narrative disclosures, the checkbox disclosure requirement, in Form F–SR, whereas the other three narrative disclosures will be in Form 20–F. Accordingly, we are estimating that the narrative disclosure burden for Form 20–F will be 2.5 hours, consistent with the 2.5 hour narrative disclosure burden for corporate issuers filing on domestic forms and Listed Closed-End Funds without the burden for the checkbox. However, because Exchange Act section 16 does not apply to investors in FPIs and thus FPIs may not rely on Exchange Act section 16 filings, we believe FPIs will have a larger burden in collecting the information necessary to comply with the checkbox requirement than other issuers. Therefore, we are estimating the burden hours for the checkbox requirement for Form F–SR to be 1.0 hour, rather than 0.5 hours.

Our estimate is for the average burden over the first three years of reporting.[547] The following table summarizes the estimated paperwork burdens associated with the final amendments' required narrative disclosure for issuers of equity securities registered under section 12 of the Exchange Act in Forms 10–K, 10–Q, 20–F, N–CSR, and F–SR.

PRA Table 3—Estimated Paperwork Burden of the Narrative Share Repurchase Disclosures in Item 703 of Regulation S–K, Form 20–F, and Form N–CSR

Affected forms	Estimated burden increase	Brief explanation of estimated burden
Form 10–K, Form 10–Q, Form N–CSR.	An increase of 3.0 burden hours for each affected form.	This estimated burden includes the estimated 3.0-hour burden for the narrative share repurchase disclosures, including the checkbox requirement, and the use of structured data for this information.
Form 20–F	An increase of 2.5 burden hours for each affected form.	This estimated burden includes the estimated 2.5-hour burden for the narrative share repurchase disclosures, other than the checkbox requirement, and the use of structured data for this information.
Form F–SR	1.0 burden hour for each affected form	This estimated burden includes the estimated 1.0-hour burden for the checkbox requirement in the narrative share repurchase disclosures and the use of structured data for this information.

We estimate that the new narrative disclosure requirements will increase the paperwork burden for filings on the affected periodic disclosure forms that include share repurchase disclosure. However, as we discussed above, not all filings on the affected forms will include these disclosures because the disclosures are required only when an issuer conducts a share repurchase. Additionally, as discussed above, we estimate that the narrative disclosure requirements in the final amendments will affect approximately 3,300 domestic corporate issuers, 300 FPIs, and 100 Listed Closed-End Funds.

Additionally, because most issuers that conduct share repurchases do so over time, rather than by making a single purchase or a few isolated purchases during the year, for purposes of this PRA analysis, we assume that the narrative disclosures will be distributed evenly throughout an issuer's fiscal year. As a result, we estimate that, annually, the required narrative disclosure will be included in one Form 10–K and three Form 10–Qs for each affected corporate issuer filing on domestic forms, four Form F–SRs and one Form 20–F for each affected FPI, and two Form N–CSRs for each affected Listed Closed-End Fund. Based on the staff's findings, the table below sets forth our estimates of the number of filings on these forms that will include share repurchase disclosure.[548]

PRA Table 4—Estimated Number of Affected Filings

Issuer type	Number of issuers affected by the repurchase disclosure annually	Forms that include share repurchase disclosure	Current annual responses in PRA inventory	Number of forms that include share repurchase disclosure annually per issuer	Number of filings that include share repurchase disclosure annually per form	Burden hour increase for narrative share repurchase disclosures	Burden hour increase for narrative share repurchase disclosures	Burden hour increase for narrative share repurchase disclosures
	(A)	(B)	(C)	(D)	(E) = (A) × (D)	(F) = (E) × 3.0	(G) = (E) × 2.5	(H) = (E) × 1.0
Corporate Issuer Reporting on Domestic Forms.	3,300	10–K	8,292	1	3,300	9,900		
		10–Q	22,925	3	9,900	29,700		
FPI	300	20–F	729	1	300		750	
		F–SR	0	4	1,200			1,200

[547] We acknowledge that final amendments may initially entail a higher burden as issuers get accustomed to collecting data for, and preparing, the form. We believe, however, that the burden will be reduced with subsequent filings.

[548] We used this data to extrapolate the effect of these changes on the paperwork burden for the listed periodic reports. The OMB's PRA filing inventories represent a three-year average, which may not align with the actual number of filings in any given year.

PRA TABLE 4—ESTIMATED NUMBER OF AFFECTED FILINGS—Continued

Issuer type	Number of issuers affected by the repurchase disclosure annually (A)	Forms that include share repurchase disclosure (B)	Current annual responses in PRA inventory (C)	Number of forms that include share repurchase disclosure annually per issuer (D)	Number of filings that include share repurchase disclosure annually per form (E) = (A) × (D)	Burden hour increase for narrative share repurchase disclosures (F) = (E) × 3.0	Burden hour increase for narrative share repurchase disclosures (G) = (E) × 2.5	Burden hour increase for narrative share repurchase disclosures (H) = (E) × 1.0
Listed Closed-End Fund.	100	N–CSR	6,898	2	200	600		

3. Estimated Paperwork Burdens of New Item 408(d)

New Item 408(d) requires disclosure with respect to an issuer's adoption or termination of a contract, instruction, or written plan to purchase or sell its own securities that is intended to satisfy the affirmative defenses conditions of Rule 10b5–1(c). The final amendments do not require issuers to disclose information about the adoption or termination of any trading arrangement for the purchase or sale of the issuer's securities that meets the requirements of a non-Rule 10b5–1 trading arrangement, nor do the final amendments require issuers to disclose pricing terms. We estimate a three-hour disclosure burden with respect to the issuer's adoption or termination of a contract, instruction, or written plan to purchase or sell its own securities that is intended to satisfy the affirmative defenses conditions of Rule 10b5–1(c).[549] Our estimate is for the average burden over the first three years of reporting.

The following table summarizes the estimated paperwork burdens associated with the final amendments' required Item 408(d) disclosures for issuers in Forms 10–K and 10–Q.

PRA TABLE 5—ESTIMATED PAPERWORK BURDEN OF NEW ITEM 408(d)

Affected forms	Estimated burden increase	Brief explanation of estimated burden increase
Form 10–K, Form 10–Q.	An increase of 3.0 burden hours for each of the affected forms.	This estimated burden includes the estimated 3.0-hour burden for the required disclosure of an issuer's adoption or termination of any contract, instruction, or written plan for the purchase or sale of securities intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) and require the use of structured data for this information.

We estimate that the new Item 408(d) disclosure will increase the current paperwork burden for filings on the affected forms. However, as we discussed above, not all filings on the affected forms will include these disclosures because the disclosures are required only when an issuer adopts or terminates a contract, instruction, or written plan to purchase or sell its own securities that is intended to satisfy the affirmative defenses conditions of Rule 10b5–1(c). As noted in Section V.A.1, an indirect approach to estimating the number of affected issuers involves extrapolating the number of companies conducting repurchases under Rule 10b5–1 plans in a given year from a combination of the incidence of Rule 10b5–1 plan use among voluntarily announced repurchases (estimated at 29 percent as previously noted) [550] and the overall number of companies conducting repurchases based on their financial statements.[551] Based on data from Compustat and EDGAR filings for fiscal years ending between January 1, 2021, and December 31, 2021, we estimate that approximately 3,600 operating companies conducted repurchases, yielding an estimate of approximately 1,000 companies affected by the Item 408(d) amendments.[552]

Additionally, because most issuers adopt or terminate a Rule 10b5–1 trading plan throughout the year, rather than adopting or terminating a single Rule 10b5–1 trading plan during the year, for purposes of this PRA analysis, we assume that each issuer will enter, adopt or terminate Rule 10b5–1 trading plans evenly throughout the year. As a result, we estimate that, annually, the new Item 408(d) disclosure will be included in one Form 10–K and three Form 10–Qs. Based on the staff's findings, the table below sets forth our estimates of the number of filings on Forms 10–K and 10–Q that will be affected by new Item 408(d).[553]

[549] In the Rule 10b5–1 Proposing Release, *see supra* note 17, the Commission estimated that the average incremental burden for an issuer to prepare the proposed Item 408(a) disclosure would be 15 hours. However, in the Rule 10b5–1 Adopting Release, *see supra* note 18, the Commission modified Item 408(a) so that the final rule does not require disclosure of pricing terms or quarterly disclosure regarding an issuer's adoption and termination of Rule 10b5–1 plans and non-Rule 10b5–1 trading arrangements. As a result, the Commission reduced the estimated PRA burden for Item 408(a) disclosure by five hours, because it estimated a two-hour burden of disclosing the pricing terms and a three-hour burden of preparing the proposed disclosure regarding the adoption and termination of Rule 10b5–1 and non-Rule 10b5–1 trading arrangements by issuers.

[550] *See supra* note 378.

[551] Using the number of issuers that announce repurchases in a given year would underestimate the number significantly because issuers may continue to implement a previously announced repurchase program over multiple years.

[552] Item 408(d) does not apply to FPIs filing on FPI forms or Listed Closed-End Funds.

[553] We used this data to extrapolate the effect of these changes on the paperwork burden for the listed periodic reports. The OMB's PRA filing inventories represent a three-year average, which may not align with the actual number of filings in any given year.

PRA TABLE 6—ESTIMATED NUMBER OF AFFECTED FILINGS FOR NEW ITEM 408(d)

Issuer type	Number of issuers affected by the repurchase disclosure annually (A)	Forms that include share repurchase disclosure (B)	Current annual responses in PRA inventory (C)	Number of forms that include share repurchase disclosure annually per issuer (D)	Number of filings that include share repurchase disclosure annually per form (E) = (A) × (D)	Burden hour increase for new item 408(d) disclosures (F) = (E) × 3.0
Corporate Issuer Reporting on Domestic Forms	1,000	10–K	8,292	1	1,000	3,000
		10–Q	22,925	3	3,000	9,000

D. Incremental and Aggregate Burden and Cost Estimates

Below we estimate the incremental and aggregate changes in paperwork burden as a result of the final amendments. These estimates represent the average burden for all issuers, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual issuers. The final amendments will create a new required collection of information and change the burden per response of existing collections of information.

We calculated the burden estimates by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review disclosure required under the final amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. The table below sets forth the percentage estimates we typically use for the burden allocation for each collection of information and the estimated burden allocation for the new collection of information. We also estimate that the average cost of retaining outside professionals is $600 per hour.[554]

PRA TABLE 7—ESTIMATED BURDEN ALLOCATION FOR THE AFFECTED COLLECTIONS OF INFORMATION

Collection of information	Internal (%)	Outside professionals (%)
Forms 10–K, 10–Q, and N–CSR	75	25
Forms 20–F and F–SR	25	75

The table below illustrates the incremental change to the total annual compliance burden of affected forms, in hours and in costs, as a result of the final amendments' estimated effect on the paperwork burden per response.

PRA TABLE 8—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS

Collection of information	Total incremental increase in burden hours (A)[a]	Change in company hours (B) = (A) × 0.75 or 0.25	Change in outside professional hours (C) = (A) × 0.25 or 0.75	Change in outside professional costs (D) = (C) × $600
10–K	22,800	17,100	5,700	$3,420,000
10–Q	68,400	51,300	17,100	10,260,000
20–F	150	37.5	112.5	67,500
N–CSR	1,200	900	300	180,000

[a] Sum of columns (F), (G), or (H) in Tables 2, 4, and 6 for each affected form.

[554] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $600 per hour. At the proposing stage, we used an estimated cost of $400 per hour. We are increasing this cost estimate to $600 per hour to adjust the estimate for inflation from August 2006.

The following tables summarize the requested paperwork burden, including the estimated total reporting burdens and costs, under the final amendments.

PRA TABLE 9—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS [555]

Form	Current burden			Program change			Requested change in burden		
	Current annual responses	Current burden hours	Current outside professional cost burden	Number of affected responses	Change in company hours	Change in outside professional costs	Current annual responses	Burden hours	Outside professional cost burden
	(A)	(B)	(C)	(D)	(E) [a]	(F) [b]	(G) [c]	(H) = (B) + (E)	(I) = (C) + (F)
Form 10–K	8,292	13,988,770	$1,835,588,919	3,300	17,100	$3,420,000	8,292	14,005,870	$1,839,008,919
Form 10–Q	22,925	3,098,084	410,257,154	9,900	51,300	10,260,000	22,925	3,149,384	420,517,154
Form 20–F	729	478,983	576,490,625	300	38	67,500	729	479,021	576,558,125
Form N–CSR	23,680	227,137	5,949,524	200	900	180,000	23,680	228,037	6,129,524

[a] From column (B) in Table 8.
[b] From column (D) in Table 8.
[c] From column (A).

The below summarizes the requested paperwork burden for the new Form F–SR collection of information, including the estimated total reporting burdens and costs, under the final amendments as described in Section III.A. For purposes of the PRA, we estimate that new Form F–SR will entail a 6.5-hour compliance burden per response with 1,200 annual responses.

PRA TABLE 10—REQUESTED PAPERWORK BURDEN FOR THE NEW COLLECTION OF INFORMATION

Collection of information	Requested paperwork burden		
	Annual responses	Burden hours	Outside professional cost burden
	(A) [a]	(A) × 7.0 × (0.25) [b]	(A) × 7.0 × (0.75) × $600 [c]
Form F–SR	1,200	2,100	$3,780,000

[a] From column (E) in Tables 2 and 4.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act (''RFA'').[556] It relates to the final amendments to the rules and forms described in Section III above.

A. Need for, and Objectives of, the Final Amendments

The final amendments modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under section 12 of the Exchange Act. The amendments require additional detail regarding the structure of an issuer's repurchase program and its share repurchases, require the filing of daily quantitative repurchase data either quarterly or semi-annually, and eliminate the requirement to file monthly repurchase data in an issuer's periodic reports. The amendments also revise and expand the existing periodic disclosure requirements about these purchases. Finally, the amendments add new quarterly disclosure in certain periodic reports related to an issuer's adoption and termination of certain trading arrangements.

The reasons for, and objectives of, the final amendments are discussed in more detail in Sections I, II, and III above. We discuss the economic impact and potential alternatives to the amendments in Section V, and the estimated compliance costs and burdens of the amendments under the PRA in Section VI above.

B. Significant Issues Raised by Public Comments

In the Proposing Release [557] and the Rule 10b5–1 Proposing Release,[558] the Commission requested comment on any aspect of the Initial Regulatory Flexibility Analysis (''IRFA''), including the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis, how the proposed amendments could further lower the burden on small entities, and how to quantify the impact of the proposed amendments. We did not receive any comments that specifically addressed the IRFA. However, some commenters addressed aspects of the proposals that could potentially affect small entities.

In particular, two commenters asserted that the proposed amendments would increase the burdens on smaller issuers,[559] and another commenter indicated its concern that the proposed amendments would induce issuers to use larger financial services firms over smaller ones.[560] Several commenters

[555] Figures in this table are rounded to the nearest whole number.

[556] 5 U.S.C. 601 *et seq.*

[557] *See supra* note 2.

[558] *See supra* note 17.

[559] *See* letters from ACCO (''Regarding the Commission's Buyback Proposal, we find the real-time disclosure and incremental detail of Form SR to be onerous and unnecessary, but we would support similar enhanced disclosure to be reported in line with XBRL as part of the normal periodic reporting process. We don't view the proposed additional frequency and details as benefiting investors, while the burden (including the costs of compliance) placed on smaller public companies like ours would be significant.'') and Profs. Lewis and White (''Although small issuers likely conduct fewer repurchases than larger ones, they do repurchase their own shares periodically to offset equity dilution from compensation plans or to alter their capital structure. By nature of their size, small issuers incur disproportionate relative compliance costs.'').

[560] *See* letter from Guzman (''[T]he new rules would have the collateral damage of likely decreasing competition in the investment banking industry, shifting business away from smaller firms to large bulge bracket investment banks. This collateral effect would be driven by the erroneous perception that larger firms are better able to cope with the additional reporting requirements. While this concern is absolutely without basis in our case, it is a perception that may be common among risk-averse corporate treasuries. Multiple companies

did not support exempting smaller issuers from the proposed amendments,[561] but some of these commenters suggested providing small issuers with more time to provide the daily quantitative repurchase disclosures.[562] Additionally, one commenter on the Rule 10b5–1 Proposing Release supported exempting SRCs from proposed Item 408(a), which we are adopting as new Item 408(d).[563] For the reasons discussed in further detail above,[564] we have not adopted any exemption for small entities.

C. Small Entities Subject to the Final Amendments

The final amendments would affect some issuers that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [565] For purposes of the RFA, under our rules, an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million.[566] An investment company, including a business development company,[567] is considered to be a ''small business'' or ''small organization'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[568]

Commission staff estimates that there are approximately 780 issuers with a class of securities registered under section 12 of the Exchange Act that file with the Commission (other than investment companies),[569] 23 Listed Closed-End Funds,[570] and nine business development companies [571] that may be considered small entities and are potentially subject to the final amendments other than new Item 408(d). Commission staff also estimates that, as of January 2022, there were approximately 1,380 issuers and two business development companies that may be considered small entities that would be subject to new Item 408(d).[572]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The final amendments apply to small entities to the same extent as other entities, irrespective of size. As noted in Section VI.D. above, while we acknowledge that smaller entities are more likely to be affected by the costs of additional disclosure, smaller entities are also less likely to have share repurchases, which would limit the incremental burden of additional reporting under the final amendments.[573] In addition, while we expect larger Listed Closed-End Funds and business development companies (''funds''), or funds that are part of a large fund complex, to incur higher costs related to final amendments in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we expect a smaller fund to find it more costly, per dollar managed, to comply with the final amendments because it would not be able to benefit from a larger fund complex's economies of scale.

The final amendments require additional detail regarding the structure of an issuer's repurchase program and quantitative disclosure of its daily repurchase data that the issuer must tag using Inline XBRL. The final amendments are intended to modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under section 12 of the Exchange Act. More specifically, the final amendments require:

- Corporate issuers that file on domestic forms to disclose daily quantitative repurchase data at the end of every quarter in an exhibit to their Form 10–Q and Form 10–K (for an issuer's fourth fiscal quarter);
- Listed Closed-End Funds to disclose daily quantitative repurchase data in their annual and semi-annual reports on Form N–CSR; and
- FPIs reporting on the FPI forms to disclose daily quantitative repurchase data at the end of every quarter in the new Form F–SR, which will be due 45 days after the end of an FPI's fiscal quarter.

Additionally, the final amendments require an issuer to include a checkbox above its tabular disclosures indicating whether its officers and directors subject to the Exchange Act section 16(a) reporting requirements (for domestic corporate issuers and Listed Closed-End Funds) or its directors and members of senior management who would be identified pursuant to Item 1 of Form 20–F (for FPIs) purchased or sold shares or other units of the class of the issuer's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced plan or program within four (4) business days before or after the issuer's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program. Further, the final amendments eliminate the current requirements in Item 703 of Regulation S–K, Item 16E of Form 20–F, and Item 14 of Form N–CSR to disclose monthly repurchase data in periodic reports.

Additionally, the final amendments require an issuer to disclose:

- The objectives or rationales for its share repurchases and the process or criteria used to determine the amount of repurchases;
- Any policies and procedures relating to purchases and sales of the issuer's securities during a repurchase program by the officers and directors, including any restriction on such transactions; and
- Whether it made its repurchases pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) and the date that the plan was adopted or terminated, and/or whether its repurchases were intended to qualify for

---

have told us that they believe larger institutions would be better equipped to (1) handle the additional compliance requirements and (2) better protect them from potential front-running trading that is likely to be created if their repurchase activity is reported daily.'').

[561] *See, e.g.,* letters from Better Markets I, BrilLiquid, CFA Institute, Cravath, Hecht, and ICGN.

[562] *See, e.g.,* letters from Cravath and Hecht.

[563] *See* letter in response to the Rule 10b5–1 Proposing Release from Maryland Bar.

[564] *See* Sections III.B.3 and III.C.3.

[565] 5 U.S.C. 601(6).

[566] *See* 17 CFR 240.0–10(a).

[567] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act. *See* 15 U.S.C. 80a–2(a)(48) and 80a–53–64.

[568] 17 CFR 270.0–10(a).

[569] This estimate is based on staff analysis of issuers, excluding co-registrants, subsidiaries, investment companies, or asset-backed securities, with EDGAR filings of Form 10–K and 20–F, or amendments thereto, filed during the calendar year of January 1, 2021, to December 31, 2021. Analysis is based on data from XBRL filings, Compustat, Ives Group Audit Analytics, and manual review of filings submitted to the Commission.

[570] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending June 2021.

[571] *Id.*

[572] This estimate is based on staff analysis of Form 10–K filings on EDGAR, or amendments thereto, filed during the calendar year of Jan. 1, 2021, to Dec. 31, 2021, and on data from XBRL filings, Compustat, and Ives Group Audit Analytics. The staff noted that the estimated number of small entities includes approximately 344 entities that are special purpose acquisition companies (''SPACs''). A SPAC is typically a shell company that is organized for the purpose of merging with or acquiring one or more unidentified private operating companies within a certain time frame. Some of these small entities that are SPACs are unlikely to remain small entities once the SPAC has completed its initial business combination and becomes an operating company.

[573] *See supra* Section V.D. In addition, in Section V.C. above we further note that to the extent that the final amendments affect small filers to a greater extent than large filers, they could result in adverse effects on competition.

the Rule 10b–18 non-exclusive safe harbor.

The final amendments also include new Item 408(d), which requires quarterly disclosure in periodic reports on Forms 10–Q and 10–K (for the issuer's fourth fiscal quarter) about an issuer's adoption and termination of Rule 10b5–1 trading arrangements. This information will also be reported using Inline XBRL.

We anticipate that the direct costs of preparing disclosures in response to the final amendments will likely be relatively small as repurchase information will be readily available to issuers, including small entities, because they are already required to provide repurchase disclosures under existing rules. Additionally, to the extent that the final requirements have a greater effect on small filers relative to large filers, they could result in adverse effects on competition. The fixed component of the legal costs of preparing the disclosure could be one contributing factor. Compliance with certain provisions of the final amendments may require the use of professional skills, including accounting, legal, and technical skills.[574] The final amendments are discussed in detail in Sections I, II, and III above. We discuss the economic impact, including the estimated compliance costs and burdens of the final rules on all issuers, including small entities, in Sections V and VI above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.[575]

The final amendments are intended to improve disclosure about repurchases of an issuer's equity securities for investors to evaluate those activities and decrease information asymmetry between issuers and investors. The additional disclosure, which will be provided in a machine-readable format, should permit investors to more quickly and efficiently evaluate information relating to issuer share repurchases, on a more granular basis. Moreover, any burdens associated with interactive data associated with the final amendments are estimated to be negligible.[576]

With respect to using performance rather than design standards, the final amendments use design standards to promote uniform compliance requirements for all registrants and to address the concerns underlying the amendments, which apply to entities of all size. For example, the final amendments set forth specific disclosure requirements an issuer must satisfy in providing its daily quantitative disclosure information. These design standards will better ensure that investors will be provided with further insight into the details of an issuer's share repurchases, which when combined with other information available about the issuer, could diminish informational asymmetry, enhance transparency, and enable investors to undertake a more thorough assessment of issuer share repurchases.

The final amendments do not provide an exemption or otherwise establish a delayed compliance timetable for small entities. We note, however, that small entities (and other issuers) are already required to provide repurchase disclosures under existing rules. Moreover, while we acknowledge that small entities are more likely to be affected by the costs of additional disclosure, all else equal (holding constant the disclosure burden), small entities are less likely to have share repurchases,[577] which would limit the incremental burden of additional reporting under the final amendments for each small entity. Further, to the extent that small entities have relatively high information asymmetries because of lower analyst and institutional coverage, the additional disclosure about their repurchases may be relatively more informative to investors. The final amendments do, however, simplify and consolidate reporting for small entities (and other issuers) by requiring quarterly and semi-annual reporting of daily quantitative repurchase data instead of daily reporting of such data, as proposed.

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in sections 12, 13, 15, and 23(a) of the Exchange Act, and sections 8, 23, 24(a), 30, 31, and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 229, 232, 240, 249, and 274

Reporting and record keeping requirements, Securities.

For the reasons set forth in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Amend § 229.408 by adding paragraph (d) to read as follows:

§ 229.408 (Item 408) Insider trading arrangements and policies.

* * * * *

(d)(1) Disclose whether, during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report), the registrant adopted or terminated any Rule 10b5–1 trading arrangement as that term is defined in paragraph (a)(1)(i) of this section. In addition, provide a description of the material terms of the Rule 10b5–1 trading arrangement (other than terms with respect to the price at which the party executing the Rule 10b5–1 trading arrangement is authorized to trade), such as:

(i) The date on which the registrant adopted or terminated the Rule 10b5–1 trading arrangement;

(ii) The duration of the Rule 10b5–1 trading arrangement; and

(iii) The aggregate number of securities to be purchased or sold pursuant to the Rule 10b5–1 trading arrangement.

Note 1 to paragraph (d)(1): If the disclosure provided pursuant to § 229.703 contains disclosure that would satisfy the requirements of paragraph (d)(1) of this section, a cross-reference to that disclosure will also satisfy the requirements of

[574] *See supra* Section III.

[575] *See supra* Section III.

[576] *See supra* note 540.

[577] *See supra* Section V.D.

paragraph (d)(1). (2) The disclosure provided pursuant to paragraph (d)(1) of this section must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

■ 3. Amend § 229.601 by:

■ a. In the exhibit table in paragraph (a), adding entry 26; and

■ b. Adding paragraph (b)(26).

The additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
*			*		*			*		*			*		*	
(26) Purchases of equity securities by the issuer and affiliated purchasers														X	X	
*			*		*			*		*			*		*	

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * * * * * * * * * *

(b) * * *

(26) *Purchases of equity securities by the issuer and affiliated purchasers.* (i) Every issuer that has a class of equity securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) that files quarterly reports on Form 10–Q or an annual report on Form 10–K must file, in the following tabular format, an exhibit to those reports disclosing, for the period covered by the report (or the issuer's fourth fiscal quarter, in the case of an annual report on Form 10–K), the total purchases made each day by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that are registered by the issuer pursuant to section 12 of the Exchange Act.

(ii) The information provided pursuant to this paragraph (b)(26) must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

(iii) This paragraph (b)(26) shall not apply to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(iv) Disclose in the table:

(A) The date, which is the date on which the purchase of shares (or units) is executed (column (a));

(B) The class of shares (or units), which should clearly identify the class, even if the issuer has only one class of securities outstanding (column (b));

(C) The total number of shares (or units) purchased on this date, which includes all shares (or units) purchased by or on behalf of the issuer or any affiliated purchaser, regardless of whether made pursuant to publicly announced repurchase plans or programs (column (c));

(D) The average price paid per share (or unit), which shall be reported in U.S. dollars and exclude brokerage commissions and other costs of execution (column (d));

(E) The total number of shares (or units) purchased on this date as part of publicly announced repurchase plans or programs (column (e));

(F) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the publicly announced repurchase plans or programs (column (f));

(G) Total number of shares (or units) purchased on this date on the open market, which includes all shares (or units) repurchased by the issuer in open-market transactions, and does not include shares (or units) purchased in tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions (column (g));

(H) Total number of shares (or units) purchased on this date that are intended by the issuer to qualify for the safe harbor in § 240.10b–18 of this chapter (Rule 10b–18) (column (h)); and

(I) Total number of shares (or units) purchased on this date pursuant to a plan that is intended by the issuer to satisfy the affirmative defense conditions of § 240.10b5–1(c) of this chapter (Rule 10b5–1(c)) (column (i)).

(v) Disclose, by footnote to the table, the date any plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) for the shares (or units) in column (i) was adopted or terminated.

(vi) In determining whether to check the box under ''Issuer Purchases of Equity Securities,'' the issuer may rely on the following, unless the issuer knows or has reason to believe that a form was filed inappropriately or that a form should have been filed but was not:

(A) A review of Forms 3 and 4 (§§ 249.103 and 249.104 of this chapter) and amendments thereto filed electronically with the Commission during the issuer's most recent fiscal year;

(B) A review of Form 5 (§ 249.105 of this chapter) and amendments thereto filed electronically with the Commission with respect to the issuer's most recent fiscal year;

(C) Any written representation from the reporting person that no Form 5 is required. The issuer must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request; and

(D) For foreign private issuers, any written representations from the directors and senior management who would be identified pursuant to Item 1 of Form 20–F, provided that the reliance is reasonable. The issuer must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request.

BILLING CODE 8011–01–P

Figure 1 to Paragraph (b)(26)—Issuer Purchases of Equity Securities (Tabular Format)

ISSUER PURCHASES OF EQUITY SECURITIES

Use the checkbox to indicate if any officer or director reporting pursuant to section 16(a) of the Exchange Act (15 U.S.C. 78p(a)), or for foreign private issuers as defined by Rule 3b-4(c) (17 CFR 240.3b-4(c)), any director or member of senior management who would be identified pursuant to Item 1 of Form 20-F (17 CFR 249.220f), purchased or sold shares or other units of the class of the issuer's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced plan or program within four (4) business days before or after the issuer's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program. □

(a) Execution Date	(b) Class of Shares (or Units)	(c) Total Number of Shares (or Units) Purchased	(d) Average Price Paid per Share (or Unit)	(e) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(f) Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	(g) Total Number of Shares (or Units) Purchased on the Open Market	(h) Total Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b-18	(i) Total Number of Shares (or Units) Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense Conditions of Rule 10b5-1(c)
Total								

BILLING CODE 8011–01–C

* * * * *

■ 4. Revise § 229.703 to read as follows:

§ 229.703 (Item 703) Purchases of equity securities by the issuer and affiliated purchasers.

(a) Disclose the specified information in narrative form with respect to the issuer's repurchases of equity securities disclosed pursuant to § 229.601(b)(26) (Item 601(b)(26) of Regulation S–K) and refer to the particular repurchases in the table in Item 601(b)(26) of Regulation S–K that correspond to the different parts of the narrative, if applicable:

(1) The objectives or rationales for each repurchase plan or program and the process or criteria used to determine the amount of repurchases.

(2) The number of shares (or units) purchased other than through a publicly announced plan or program, and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions).

(3) For publicly announced repurchase plans or programs:

(i) The date each plan or program was announced;

(ii) The dollar amount (or share or unit amount) approved;

(iii) The expiration date (if any) of each plan or program;

(iv) Each plan or program that has expired during the period covered by the table in Item 601(b)(26) of Regulation S–K; and

(v) Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

(4) Any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restrictions on such transactions.

(b) The disclosure provided pursuant to paragraph (a) of this section must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 232.405 by:
■ a. Revising the introductory text and paragraphs (a)(2) and (4) and (b)(4)(iii);
■ b. Adding paragraph (b)(4)(iv); and
■ c. Revising Note 1 to § 232.405.

The revisions and addition read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of Form 11–K (§ 249.311 of this chapter); paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), § 240.13a–21 of this chapter (Rule 13a–21 under the Exchange Act), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), § 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction I of Form F–SR (§ 249.333 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K, General Instruction F of Form 11–K (§ 249.311 of this chapter); paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), § 240.13a–21 of this chapter (Rule 13a–21 under the Exchange Act), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Rule 17Ad–27(d) under the Exchange Act, Note D.5 of Rule 14a–101 under the Exchange Act, Item 1 of Rule 14c–101 under the Exchange Act, General Instruction I to Form F–SR (§ 249.333 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

* * * * *

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K, General Instruction F of Form 11–K (§ 249.311 of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), Rule 13a–21 under the Exchange Act, paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Rule 17Ad–27(d) under the Exchange Act, Note D.5 of Rule 14a–101 under the Exchange Act, Item 1 of Rule 14c–101 under the Exchange Act, General Instruction I to Form F–SR (§ 249.333 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(b) * * *

(4) * * *

(iii) Any disclosure provided in response to: § 229.402(x) of this chapter (Item 402(x) of Regulation S–K); § 229.408(a)(1) and (2) of this chapter (Item 408(a)(1) and (2) of Regulation S–K); § 229.408(b)(1) of this chapter (Item 408(b)(1) of Regulation S–K); § 229.408(d) of this chapter (Item 408(d) of Regulation S–K); and Item 16J(a) of Form 20–F (§ 249.220f of this chapter).

(iv) Any disclosure provided in response to: § 229.601(b)(26) of this chapter (Item 601(b)(26) of Regulation S–K); § 229.703 of this chapter (Item 703 of Regulation S–K); Item 16E of Form 20–F (§ 249.220f of this chapter); Item 14 of Form N–CSR (§§ 249.331 and 274.128 of this chapter); Rule 13a–21 under the Exchange Act; and General Instruction I to Form F–SR (§ 249.333 of this chapter).

* * * * *

Note 1 to § 232.405: Item 601(b)(101) of Regulation S–K specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 239.11 (Form S–1), 239.13 (Form S–3), 239.25 (Form S–4), 239.18 (Form S–11), 239.31 (Form F–1), 239.33 (Form F–3), 239.34 (Form F–4), 249.310 (Form 10–K), 249.308a (Form 10–Q), and 249.308 (Form 8–K). General Instruction F of Form 11–K (§ 249.311 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not

Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter) and Paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 249.240f (Form 40–F) and 249.306 of this chapter (Form 6–K). Rule 17Ad–27(d) under the Exchange Act specifies the circumstances under which an Interactive Data File must be submitted with respect the reports required under Rule 17Ad–27. Note D.5 of § 240.14a–101 of this chapter (Schedule 14A) and Item 1 of § 240.14c–101 of this chapter (Schedule 14C) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. Rule 13a–21 under the Exchange Act and General Instruction I to Form F–SR (§ 249.333 of this chapter) specify the circumstances under which an Interactive Data File must be submitted, with respect to Form F–SR. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with §§ 210.6–01 through 210.6–10 of this chapter (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 8. Add § 240.13a–21 to read as follows:

§ 240.13a–21 Purchases of equity securities by a foreign private issuer and affiliated purchasers.

(a) Every foreign private issuer that has a class of equity securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) and that does not file quarterly reports on Form 10–Q (§ 249.308a of this chapter) and annual reports on Form 10–K (§ 249.310 of this chapter) must file a Form F–SR (§ 249.333 of this chapter) disclosing, for the period covered by the form and as specified by the form, the aggregate purchases during each day made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3), of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Act, within the time period specified in General Instruction I to Form F–SR. The information provided pursuant to the form must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

(b) Paragraph (a) of this section shall not apply to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et. seq.*).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

* * * * *

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 10. Amend Form 20–F (referenced in § 249.220f) by revising Part II, Item 16E.

Note: Form 20–F is attached as Appendix A to this document. Form 20–F will not appear in the Code of Federal Regulations.

■ 11. Amend Form 10–Q (referenced in § 249.308a) by revising the heading of Item 2 in Part II, paragraph (c) to Item 2 in Part II, and paragraph (c) to Item 5 in Part II.

Note: Form 10–Q is attached as Appendix B to this document. Form 10–Q will not appear in the Code of Federal Regulations.

■ 12. Amend Form 10–K (referenced in § 249.310) by revising General Instruction J(1)(*l*), paragraph (c) to Item 5 in Part II and Item 9B in Part II.

Note: Form 10–K is attached as Appendix C to this document. Form 10–K will not appear in the Code of Federal Regulations.

■ 13. Add § 249.333 to read as follows:

§ 249.333 Form F–SR.

This form shall be used for reporting of purchases by or on behalf of the issuer or an affiliated purchaser of equity securities registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) that does not file quarterly reports on Form 10–Q (§ 249.308a), and annual reports on Form 10–K (§ 249.310), pursuant to § 240.13a–21 of this chapter.

■ 14. Add Form F–SR (referenced in § 249.333).

Note: Form F–SR is attached as Appendix D to this document. Form F–SR will not appear in the Code of Federal Regulations.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 15. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37 unless otherwise noted.

* * * * *

■ 16. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by revising Item 14.

Note: The text of Form N–CSR is attached as Appendix E to this document. Form N–CSR will not appear in the Code of Federal Regulations.

By the Commission.

Dated: May 3, 2023.

Vanessa A. Countryman,

Secretary.

Appendix A—Form 20–F

Form 20–F

* * * * *

Part II

* * * * *

Item 16E Purchases of Equity Securities by the Issuer and Affiliated Purchasers

(a) For the Form F–SRs filed during the fiscal year covered by the Form 20–F, disclose the specified information in narrative form with respect to the issuer's repurchases of equity securities that were disclosed in the issuer's Form F–SRs (required by § 240.13a–21 of this chapter), and refer to the particular repurchases in the table in the applicable Form F–SR that correspond to the different parts of the narrative, if applicable:

(1) The objectives or rationales for each repurchase plan or program and the process or criteria used to determine the amount of repurchases.

(2) The number of shares (or units) purchased other than through a publicly announced plan or program, and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(3) For publicly announced repurchase plans or programs:

(i) The date each plan or program was announced;

(ii) The dollar amount (or share or unit amount) approved;

(iii) The expiration date (if any) of each plan or program;

(iv) Each plan or program that has expired during the period covered by the tables in Form F–SRs; and

(v) Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

(4) Any policies and procedures relating to purchases and sales of the issuer's securities by its directors and members of senior management during a repurchase program, including any restrictions on such transactions.

(b) The disclosure provided pursuant to this Item must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

* * * * *

Appendix B—Form 10–Q

FORM 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds, and Issuer Purchases of Equity Securities.

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchases made in the quarter covered by the report.

* * * * *

Item 5. Other Information.

* * * * *

(c) Furnish the information required by Items 408(a) and 408(d) of Regulation S–K ((§§ 229.408(a) and 229.408(d)).

* * * * *

FORM 10–K

* * * * *

General Instructions

* * * * *

J. Use of This Form by Asset-Backed Issuers

* * * * *

(1) * * *

* * * * *

(*l*) Item 9A, Controls and Procedures and Item 9B(b), Other Information;

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in the fourth quarter of the fiscal year covered by the report.

* * * * *

Item 9B. Other Information

(a) The registrant must disclose under this item any information required to be disclosed in a report on Form 8–K during the fourth quarter of the year covered by this Form 10–K, but not reported, whether or not otherwise required by this Form 10–K. If disclosure of such information is made under this item, it need not be repeated in a report on Form 8–K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10–K.

(b) Furnish the information required by Items 408(a) and 408(d) of Regulation S–K (§§ 229.408(a) and 229.408(d) of this chapter).

* * * * *

Appendix D—Form F–SR

United States Securities and Exchange Commission

Washington, DC 20549

FORM F–SR

Foreign Private Issuer Share Repurchase Report

_____

(Exact name of registrant as specified in its charter)

_____

(Translation of Registrant's name into English)

_____

(Jurisdiction of incorporation or organization)

_____

(Address of Principal Executive Offices)

_____

_____

(Name, Telephone, Email and/or Facsimile number and Address of Company Contact Person)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered

Securities registered pursuant to section 12(g) of the Act:

_____

(Title of class)

_____

(Title of class)

General Instructions

I. Repurchases To Be Reported and Time for Filing of Report

If purchases are made by or on behalf of the registrant or any ''affiliated purchaser,'' as defined in 17 CFR 10b–18(a)(3) of this chapter, of shares or other units of any class of the registrant's equity securities that is registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), file with the Commission in accordance with the requirements of 17 CFR 240.13a–21 (Rule 13a–21) the information set forth below in an Interactive Data File as required by 17 CFR 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual within 45 days after the end of the registrant's fiscal quarter.

II. Items To Be Disclosed in Form F–SR

(a) The date, which is the date on which the purchase of shares (or units) is executed (column (a));

(b) The class of shares (or units), which should clearly identify the class, even if the registrant has only one class of securities outstanding (column (b));

(c) The total number of shares (or units) purchased on this date, which includes all shares (or units) purchased by or on behalf of the registrant or any affiliated purchaser, regardless of whether made pursuant to publicly announced repurchase plans or programs (column (c));

(d) The average price paid per share (or unit), which shall be reported in U.S. dollars and exclude brokerage commissions and other costs of execution (column (d));

(e) The total number of shares (or units) purchased on this date as part of publicly announced repurchase plans or programs (column (e));

(f) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the publicly announced repurchase plans or programs (column (f));

(g) Total number of shares (or units) purchased on this date on the open market, which includes all shares (or units) repurchased by the registrant in open-market transactions, and does not include shares (or units) purchased in tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions (column (g));

(h) Total number of shares (or units) purchased on this date that are intended by the registrant to qualify for the safe harbor in § 240.10b–18 of this chapter (Rule 10b–18) (column (h)); and

(i) Total number of shares (or units) purchased on this date pursuant to a plan that is intended by the registrant to satisfy the affirmative defense conditions of § 240.10b5–1(c) of this chapter (Rule 10b5–1(c)) (column (i)).

(j) Disclose, by footnote to the table, the date any plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) for the shares (or units) in column (i) was adopted or terminated.

III. Instructions for Preparing the Report

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report meeting the requirements of 17 CFR 240.13a–21 (Rule 13a–21). The report shall contain all columns of the table, and any columns for which there is no relevant information may be appropriately marked or left blank. The table may contain additional columns as necessary to provide disclosure responsive to the requirements of Rule 13a–21 provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13). These General Instructions are not to be filed with the report.

(b) The disclosure provided relates to the registrant's securities in ordinary share form, whether the registrant has repurchased the shares or depositary receipts that represent the shares.

(c) Price data and other data should be stated in the same currency used in the registrant's primary financial statements.

(d) In determining whether to check the box under ''Registrant Purchases of Equity Securities,'' the registrant may rely on written representations from the directors and senior management who would be identified pursuant to Item 1 of Form 20–F, provided that the reliance is reasonable. The registrant must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request.

IV. Submission of the Form

This form must be submitted in electronic format via our Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR part 232). You must provide the signatures required for the Form in accordance with 17 CFR 232.302.

BILLING CODE 8011–01–P

REGISTRANT PURCHASES OF EQUITY SECURITIES

Use the checkbox to indicate if any director or member of senior management who would be identified pursuant to Item 1 of Form 20-F (§ 249.220f) purchased or sold shares or other units of the class of the registrant's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced plan or program within four (4) business days before or after the registrant's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program. □

(a) Execution Date	(b) Class of Shares (or Units)	(c) Total Number of Shares (or Units) Purchased	(d) Average Price Paid per Share (or Units)	(e) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(f) Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	(g) Total Number of Shares (or Units) Purchased on the Open Market	(h) Total Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b-18	(i) Total Number of Shares (or Units) Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense Conditions of Rule 10b5-1(c)
Total								

SIGNATURES

Pursuant to the requirements of the Act, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____

(Registrant)

Date: _____ _____

(Signature)*

*Print name and title of the signing officer under their signature.

BILLING CODE 8011–01–C

Appendix E—Form N–CSR

Form N–CSR

* * * * *

Item 14. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers

(a) Purchases of Equity Securities by the Registrant and Affiliated Purchasers.

(i) If the registrant is a closed-end management investment company, provide the specified information in the following tabular format, disclosing, for the period covered by the report, the total purchases made during each day by or on behalf of the registrant or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to section 12 of the Exchange Act.

(ii) Disclose in the table:

(A) The date, which is the date on which the purchase of shares (or units) is executed (column (a));

(B) The class of shares (or units), which should clearly identify the class, even if the registrant has only one class of securities outstanding (column (b));

(C) The total number of shares (or units) purchased on this date, which includes all shares (or units) purchased by or on behalf of the registrant or any affiliated purchaser, regardless of whether made pursuant to publicly announced repurchase plans or programs (column (c));

(D) The average price paid per share (or unit), which shall be reported in U.S. dollars and exclude brokerage commissions and other costs of execution (column (d));

(E) The total number of shares (or units) purchased on this date as part of publicly announced repurchase plans or programs (column (e));

(F) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the publicly announced repurchase plans or programs (column (f));

(G) Total number of shares (or units) purchased on this date on the open market, which includes all shares (or units) repurchased by the registrant in open-market transactions, and does not include shares (or units) purchased in tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions (column (g));

(H) Total number of shares (or units) purchased on this date that are intended by the registrant to qualify for the safe harbor in § 240.10b–18 (Rule 10b–18) of this chapter (column (h)); and

(I) Total number of shares (or units) purchased on this date pursuant to a plan that is intended by the registrant to satisfy the affirmative defense conditions of § 240.10b5–1(c) (Rule 10b5–1(c)) of this chapter (column (i)).

(iii) Disclose, by footnote to the table, the date any plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) for the shares (or units) in column (i) was adopted or terminated.

(iv) In determining whether to check the box under ''Registrant Purchases of Equity Securities,'' the registrant may rely on the following, unless the registrant knows or has reason to believe that a form was filed inappropriately or that a form should have been filed but was not:

(A) A review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto filed electronically with the Commission during the registrant's most recent fiscal year;

(B) A review of Form 5 (17 CFR 249.105) and amendments thereto filed electronically with the Commission with respect to the registrant's most recent fiscal year; and

(C) Any written representation from the reporting person that no Form 5 is required. The registrant must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request.

BILLING CODE 8011–01–P

REGISTRANT PURCHASES OF EQUITY SECURITIES

Use the checkbox to indicate if any officer or director reporting pursuant to Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) purchased or sold shares or other units of the class of the registrant's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced plan or program within four (4) business days before or after the registrant's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program. ☐

(a) Execution Date	(b) Class of Shares (or Units)	(c) Total Number of Shares (or Units) Purchased	(d) Average Price Paid per Share (or Unit)	(e) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(f) Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	(g) Total Number of Shares (or Units) Purchased on the Open Market	(h) Total Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b-18	(i) Total Number of Shares (or Units) Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense Conditions of Rule 10b5-1(c)
Total								

(b) Disclose the specified information in narrative form with respect to the registrant's repurchases of equity securities disclosed in paragraph (a) and refer to the particular repurchases in the table in paragraph (a) that correspond to the different parts of the narrative, if applicable:

(1) The objectives or rationales for each repurchase plan or program and the process or criteria used to determine the amount of repurchases;

(2) The number of shares (or units) purchased other than through a publicly announced plan or program, and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions);

(3) For publicly announced repurchase plans or programs:

(i) The date each plan or program was announced;

(ii) The dollar amount (or share or unit amount) approved;

(iii) The expiration date (if any) of each plan or program;

(iv) Each plan or program that has expired during the period covered by the table in paragraph (a); and

(v) Each plan or program the registrant has determined to terminate prior to expiration, or under which the registrant does not intend to make further purchases.

(4) Any policies and procedures relating to purchases and sales of the registrant's securities by its officers and directors during a repurchase program, including any restrictions on such transactions.

(c) The disclosure provided pursuant to this Item must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

[FR Doc. 2023–09965 Filed 5–31–23; 8:45 am]

BILLING CODE 8011–01–C

FEDERAL REGISTER

Vol. 88 Thursday,

No. 105 June 1, 2023

Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Electric Motor; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0007]

RIN 1904–AE63

Energy Conservation Program: Energy Conservation Standards for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Direct final rule.

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 electric motors. EPCA also requires the U.S. Department of Energy (''DOE'') to periodically determine whether more-stringent, standards would be technologically feasible and economically justified, and would result in significant energy savings. In this direct final rule, DOE is adopting new and amended energy conservation standards for electric motors. It has determined that the new and amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is September 29, 2023, unless adverse comment is received by September 19, 2023. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the direct final rule, a timely withdrawal of this rule will be published in the **Federal Register**. If no such adverse comments are received, compliance with the new and amended standards established for electric motors in this direct final rule is required on and after June 1, 2027.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found *www.regulations.gov/docket/EERE-2020-BT-STD-0007.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555; Email: *matthew.ring@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Direct Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317). Such equipment includes electric motors, the subject of this rulemaking.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the 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. 6316(a); 42 U.S.C. 6295(m))

In light of the above and under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule amending the energy conservation standards for electric motors. The amended standard levels in this document were submitted in a joint recommendation (the ''November 2022 Joint Recommendation'') [3] by the American Council for an Energy-Efficient Economy (''ACEEE''), Appliance Standards Awareness Project (''ASAP''), National Electrical Manufacturers Association (''NEMA''), Natural Resources Defense Council (''NRDC''), Northwest Energy Efficiency Alliance (''NEEA''), Pacific Gas & Electric Company (''PG&E''), San Diego Gas & Electric (''SDG&E''), and Southern California Edison (''SCE'') hereinafter referred to as ''the Electric Motors Working Group.'' In a letter comment submitted December 12, 2022, the New York State Energy Research and Development Authority (''NYSERDA'') expressed its support of the November 2022 Joint Recommendation and urged DOE to implement it in a timely manner. The November 2022 Joint Recommendation was preceded by the following DOE actions in this rulemaking and stakeholder comments thereon: May 2020 Early Assessment Review RFI (85 FR 30878 (May 21, 2020)); March 2022 Preliminary Analysis (87 FR 11650 (March 2, 2022)) and the Preliminary Analysis TSD (''March 2022 Prelim TSD''). See sections II.B.2 and II.B.3 for a detailed history of the current rulemaking and a discussion of the November 2022 Joint Recommendation.

After carefully considering the November 2022 Joint Recommendation, DOE determined that the recommendations contained therein are compliant with 42 U.S.C. 6295(o), as required by 42 U.S.C. 6295(p)(4)(A)(i) for the issuance of a direct final rule. As required by 42 U.S.C. 6295(p)(4)(A)(i), DOE is simultaneously publishing a NOPR proposing that the identical standard levels contained in this direct final rule be adopted. Consistent with the statute, DOE is providing a 110-day public comment period on the direct final rule. (42 U.S.C. 6295(p)(4)(B)) If DOE determines that any comments received provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o), DOE will continue the rulemaking under the simultaneously published NOPR. (42 U.S.C. 6295(p)(4)(C)) See section II.A for more details on DOE's statutory authority.

This direct final rule documents DOE's analyses to objectively and independently evaluate the energy savings potential, technological feasibility, and economic justification of the standard levels recommended in the November 2022 Joint Recommendation, as per the requirements of 42 U.S.C. 6295(o).

Ultimately, DOE found that the standard levels recommended in the November 2022 Joint Recommendation would result in significant energy savings and are technologically feasible and economically justified. Table I–1 through Table I–3 document the amended standards for electric motors. The amended standards correspond to the recommended trial standard level (''TSL'') 2 (as described in section V.A of this document) and are expressed in terms of nominal full-load efficiency. The amended standards are the same as those recommended by the Electric Motors Working Group. These standards apply to all products listed in through Table I–1 through Table I–3 and manufactured in, or imported into, the United States starting on June 1, 2027.

[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 C was re-designated Part A–1.

[3] Joint comment response to the published Notification of a webinar and availability of preliminary technical support document; *www.regulations.gov/comment/EERE-2020-BT-STD-0007-0035*.

TABLE I–1—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....
550/410	95.8	96.2	96.2	96.2	.....	.....	.....	.....
600/447	95.8	96.2	96.2	96.2	.....	.....	.....	.....
650/485	95.8	96.2	96.2	96.2	.....	.....	.....	.....
700/522	95.8	96.2	96.2	96.2	.....	.....	.....	.....
750/559	95.8	96.2	96.2	96.2	.....	.....	.....	.....

TABLE I–2—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY STANDARD FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

TABLE I–3—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY SPECIALIZED FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	74.0	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	.....	.....
15/11	90.2	89.5	91.0	91.0	.....	.....	.....	.....
20/15	90.2	90.2	91.0	91.0	.....	.....	.....	.....

A. Benefits and Costs to Consumers

Table I–4 summarizes DOE's evaluation of the economic impacts of the adopted standards on consumers of electric motors, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[4] The average LCC savings are positive for all representative units, and the PBP is less than the average lifetime of electric motors, which is estimated to be 13.6 years (see section V.B.1 of this document).

TABLE I–4—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF ELECTRIC MOTORS

Equipment class group	Representative unit	Average LCC savings (2021$)	Simple payback period (years)
MEM, 1–500 hp, NEMA Design A and B	RU1	N/A	N/A
	RU2	N/A	N/A
	RU3	N/A	N/A
	RU4	567.1	4.1
	RU5	N/A	N/A
MEM, 501–750 hp, NEMA Design A and B above 500 hp	RU6	2,550.1	3.7
AO–MEM (Standard Frame Size)	RU7	57.6	4.0
	RU8	472.4	1.6
	RU9*	.....	.....
	RU10	930.7	4.9
AO-Polyphase (Specialized Frame Size)	RU11	49.9	4.1

The entry ''N/A'' means not applicable because there is no change in the standard at certain TSLs.
* No impact because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 for RU9.

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2023–2056). Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of electric motors in the case without new and amended standards is $5,023 million in 2021 dollars. Under the adopted standards, DOE estimates the change in INPV to range from −6.6 percent to −6.0 percent, which is approximately −$333 million to −$303 million. In order to bring products into compliance with new and amended standards, it is estimated that industry will incur total conversion costs of $468 million.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in sections IV.J and V.B.2 of this document.

C. National Benefits and Costs[5]

DOE's analyses indicate that the adopted energy conservation standards for electric motors would save a significant amount of energy. Relative to the case without new and amended standards, the lifetime energy savings for electric motors purchased in the 30-year period that begins in the anticipated year of compliance with the new and amended standards (2027–2056) amount to 3.0 quadrillion British thermal units (''Btu''), or quads.[6] This represents a savings of 0.2 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 standards for electric motors ranges from $2.23 billion (at a 7-percent discount rate) to $7.47 billion (at a 3-percent discount rate). This NPV

[4] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.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).

[5] All monetary values in this document are expressed in 2021 dollars.

[6] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

expresses the estimated total value of future operating-cost savings minus the estimated increased equipment and installation costs for electric motors purchased in 2027–2056.

In addition, the adopted standards for electric motors are projected to yield significant environmental benefits. DOE estimates that the adopted standards will result in cumulative emission reductions (over the same period as for energy savings) of 91.69 million metric tons (''Mt'')[7] of carbon dioxide (''CO_2''), 35.12 thousand tons of sulfur dioxide (''SO_2''), 148.74 thousand tons of nitrogen oxides (''NO_X''), 690.10 thousand tons of methane (''CH_4''), 0.82 thousand tons of nitrous oxide (''N_2O''), and 0.23 tons of mercury (''Hg'').[8] The estimated cumulative reduction in CO_2 emissions through 2030 amounts to 0.90 million Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 0.15 million homes.

DOE estimates climate benefits from a reduction in greenhouse gases (GHG) using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of GHG (SC–GHG). DOE used SC–GHG values based on the interim values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG),[9] as discussed in section IV.K of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are $3.14 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

DOE also estimated health benefits from SO_2 and NO_X emissions reductions.[10] DOE estimated the present value of the health benefits would be $1.76 billion using a 7-percent discount rate, and $5.72 billion using a 3-percent discount rate.[11] 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–5 summarizes the economic benefits and costs expected to result from the new and amended standards for electric motors. 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–5—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR ELECTRIC MOTORS

[TSL 2]

	Billion $2021
3% discount rate	
Consumer Operating Cost Savings	8.8
Climate Benefits *	3.1
Health Benefits **	5.7
Total Benefits †	17.7
Consumer Incremental Equipment Costs ‡	1.4
Net Benefits	16.3
7% discount rate	
Consumer Operating Cost Savings	3.0
Climate Benefits * (3% discount rate)	3.1
Health Benefits **	1.8
Total Benefits †	7.8
Consumer Incremental Equipment Costs ‡	0.7
Net Benefits	7.1

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 2027 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the 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 of considering the benefits calculated using all four SC–GHG estimates.

** 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.

[7] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[8] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (''*AEO2022*''). *AEO2022* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of *AEO2022* assumptions that effect air pollutant emissions.

[9] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021 (''February 2021 SC–GHG TSD''*). www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[10] DOE estimated the monetized value of SO_2 and NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the scientific literature. See section IV.L.2 of this document for further discussion.

[11] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See Table V–41 for net benefits using all four 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).

‡ Costs include incremental equipment costs as well as installation costs.

The benefits and costs of the standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of the benefits of GHG and NO_X and SO_2 emission reductions, all annualized.[12] The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of electric motors shipped in 2027–2056. The benefits associated with reduced emissions achieved as a result of the standards are also calculated based on the lifetime of electric motors shipped in 2027–2056.

Estimates of annualized benefits and costs of the adopted standards are shown in Table I–6. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is $62.1 million per year in increased equipment costs, while the estimated annual benefits are $254.8 million in reduced equipment operating costs, $164.8 million in climate benefits, and $151.4 million in health benefits. In this case, the net benefit would amount to $508.9 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $71.0 million per year in increased equipment costs, while the estimated annual benefits are $463.6 million in reduced operating costs, $164.8 million in climate benefits, and $300.7 million in health benefits. In this case, the net benefit would amount to $858.2 million per year.

TABLE I–6—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR ELECTRIC MOTORS

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	463.6	405.1	542.9
Climate Benefits *	164.8	148.0	186.5
Health Benefits **	300.7	269.5	341.0
Total Benefits †	929.1	822.5	1070.4
Consumer Incremental Equipment Costs ‡	71.0	73.7	73.0
Net Benefits	858.2	748.8	997.4
7% discount rate			
Consumer Operating Cost Savings	254.8	225.3	293.6
Climate Benefits * (3% discount rate)	164.8	148.0	186.5
Health Benefits **	151.4	137.1	169.5
Total Benefits †	571.0	510.4	649.6
Consumer Incremental Equipment Costs ‡	62.1	63.8	63.9
Net Benefits	508.9	446.6	585.6

Note: This table presents the costs and benefits associated with electric motors shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

** 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.

[12] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2023, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2023. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See Table V–41 for net benefits using all four 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).

‡ Costs include incremental equipment costs as well as installation costs.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, V.B.3 and V.C of this document.

D. Conclusion

DOE has determined that the November 2022 Joint Recommendation containing recommendations with respect to energy conservation standards for electric motors was submitted jointly by interested persons that are fairly representative of relevant points of view, in accordance with 42 U.S.C. 6295(p)(4)(A). After considering the analysis and weighing the benefits and burdens, DOE has determined that the recommended standards are in accordance with 42 U.S.C. 6295(o), which contains the criteria for prescribing new or amended standards. Specifically, the Secretary has determined that the adoption of the recommended standards would result in the significant conservation of energy and is technologically feasible and economically justified. In determining whether the recommended standards are economically justified, the Secretary has determined that the benefits of the recommended standards exceed the burdens. Namely, the Secretary has concluded that the recommended standards, when considering the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings, would yield benefits outweighing the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the standards for electric motors is $62.1 million per year in increased equipment and installation costs, while the estimated annual benefits are $254.8 million in reduced equipment operating costs, $164.8 million in climate benefits and $151.4 million in health benefits. The net benefit amounts to $508.9 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.[13] 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.

As previously mentioned, the standards are projected to result in estimated national energy savings of 3.0 quads (FFC), the equivalent of the primary annual energy use of 31 million homes. The NPV of consumer benefit for these projected energy savings is $2.2 billion using a discount rate of 7 percent, and $7.5 billion using a discount rate of 3 percent. The cumulative emission reductions associated with these energy savings are 91.69 Mt of CO_2, 35.12 thousand tons of SO_2, 148.74 thousand tons of NO_X, 690.10 thousand tons of CH_4, 0.82 thousand tons of N_2O, and 0.23 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) is $3.14 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions is $1.76 billion using a 7-percent discount rate, and $5.72 billion using a 3-percent discount rate. Based on these findings, DOE has determined the energy savings from the standard levels adopted in this DFR are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying TSD.

Under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule (''DFR'') amending the energy conservation standards for electric motors. Consistent with this authority, DOE is also publishing elsewhere in this **Federal Register** a notice of proposed rulemaking proposing standards that are identical to those contained in this direct final rule. See 42 U.S.C. 6295(p)(4)(A)(i).

II. Introduction

The following section briefly discusses the statutory authority underlying this direct final rule, as well as some of the relevant historical background related to the establishment of standards for electric motors.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C[14] of EPCA added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency of certain types of industrial equipment, including electric motors, the subject of this direct final rule. (42 U.S.C. 6311(1)(A)). The Energy Policy Act of 1992 (''EPACT 1992'') (Pub. L. 102–486 (Oct. 24, 1992)) further amended EPCA by establishing energy conservation standards and test procedures for certain commercial and industrial electric motors that are manufactured alone or as a component of another piece of equipment. In December 2007, Congress enacted the Energy Independence and Security Act of 2007 (''EISA 2007'') (Pub. L. 110–140 (Dec. 19, 2007). Section 313(b)(1) of EISA 2007 updated the energy conservation standards for those electric motors already covered by EPCA and established energy conservation standards for a larger scope of motors not previously covered by standards. (42 U.S.C. 6313(b)(2)) EISA 2007 also revised certain statutory definitions related to electric motors. *See* EISA 2007, sec. 313 (amending statutory definitions related to electric motors at 42 U.S.C. 6311(13)).

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 include definitions (42 U.S.C.

[13] 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).

[14] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6316(a) (applying the preemption waiver provisions of 42 U.S.C. 6297))

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. 6314(a), 42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)) The DOE test procedures for electric motors appear at title 10 of the Code of Federal Regulations (''CFR'') part 431, subpart B, appendix 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 notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)) DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including electric motors. 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. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard: (1) for certain products, including electric motors, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, 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. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered 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. 6316(a); 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 products 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. 6316(a); 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 such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)(2))

Finally, EISA 2007 amended EPCA, in relevant part, to grant DOE authority to issue a final rule (*i.e.,* a ''direct final rule'' or ''DFR'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, that contains recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)) Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly-submitted recommendation for an energy or water conservation standard satisfies 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable.

The direct final rule must be published simultaneously with a NOPR that proposes an energy or water conservation standard that is identical to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) Based on the comments received during this period, the direct final rule will either become effective, or DOE will withdraw it not later than 120 days after its issuance if (1) one or more adverse comments is received, and (2) DOE determines that those comments, when viewed in light of the rulemaking record related to the direct final rule, provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o), 42 U.S.C. 6313(a)(6)(B), or any other applicable law. (42 U.S.C. 6295(p)(4)(C)) Receipt of an alternative joint recommendation may also trigger a DOE withdrawal of the direct final rule in the same manner. *Id.* After withdrawing a direct final rule, DOE must proceed with the notice of proposed rulemaking published simultaneously with the direct final rule and publish in the **Federal Register** the reasons why the direct final rule was withdrawn. *Id.*

Typical of other rulemakings, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, the substance of any adverse comment(s) received will be weighed against the anticipated benefits of the jointly-submitted recommendations and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that, to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

B. Background

1. Current Standards

In a final rule published on May 29, 2014, DOE prescribed the current energy conservation standards for electric motors manufactured on and after June 1, 2016. 79 FR 30934 (''May 2014 Final Rule''). These standards are set forth in DOE's regulations at 10 CFR 431.25 and are repeated in Table II–1, Table II–2, and Table II–3.

TABLE II–1—ENERGY CONSERVATION STANDARDS FOR NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	94.1	93.6	95.4	95.4	95.0	95.0	93.6	94.1
125/90	95.0	94.1	95.4	95.4	95.0	95.0	94.1	94.1
150/110	95.0	94.1	95.8	95.8	95.8	95.4	94.1	94.1
200/150	95.4	95.0	96.2	95.8	95.8	95.4	94.5	94.1
250/186	95.8	95.0	96.2	95.8	95.8	95.8	95.0	95.0
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....

TABLE II–2—ENERGY CONSERVATION STANDARDS FOR NEMA DESIGN C AND IEC DESIGN H MOTORS AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)					
	4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	92.4	93.0	91.7	91.7	89.5	90.2
20/15	93.0	93.0	91.7	92.4	90.2	91.0

TABLE II–2—ENERGY CONSERVATION STANDARDS FOR NEMA DESIGN C AND IEC DESIGN H MOTORS AT 60 Hz—Continued

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)					
	4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open
25/18.5	93.6	93.6	93.0	93.0	90.2	91.0
30/22	93.6	94.1	93.0	93.6	91.7	91.7
40/30	94.1	94.1	94.1	94.1	91.7	91.7
50/37	94.5	94.5	94.1	94.1	92.4	92.4
60/45	95.0	95.0	94.5	94.5	92.4	93.0
75/55	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.4	95.4	95.0	95.0	93.6	94.1
125/90	95.4	95.4	95.0	95.0	94.1	94.1
150/110	95.8	95.8	95.8	95.4	94.1	94.1
200/150	96.2	95.8	95.8	95.4	94.5	94.1

TABLE II–3—ENERGY CONSERVATION STANDARDS FOR FIRE PUMP ELECTRIC MOTORS AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	75.5	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	88.5	89.5
15/11	90.2	89.5	91.0	91.0	90.2	90.2	88.5	89.5
20/15	90.2	90.2	91.0	91.0	90.2	91.0	89.5	90.2
25/18.5	91.0	91.0	92.4	91.7	91.7	91.7	89.5	90.2
30/22	91.0	91.0	92.4	92.4	91.7	92.4	91.0	91.0
40/30	91.7	91.7	93.0	93.0	93.0	93.0	91.0	91.0
50/37	92.4	92.4	93.0	93.0	93.0	93.0	91.7	91.7
60/45	93.0	93.0	93.6	93.6	93.6	93.6	91.7	92.4
75/55	93.0	93.0	94.1	94.1	93.6	93.6	93.0	93.6
100/75	93.6	93.0	94.5	94.1	94.1	94.1	93.0	93.6
125/90	94.5	93.6	94.5	94.5	94.1	94.1	93.6	93.6
150/110	94.5	93.6	95.0	95.0	95.0	94.5	93.6	93.6
200/150	95.0	94.5	95.0	95.0	95.0	94.5	94.1	93.6
250/186	95.4	94.5	95.0	95.4	95.0	95.4	94.5	94.5
300/224	95.4	95.0	95.4	95.4	95.0	95.4	.....	.....
350/261	95.4	95.0	95.4	95.4	95.0	95.4	.....	.....
400/298	95.4	95.4	95.4	95.4	.....	.....	.....	.....
450/336	95.4	95.8	95.4	95.8	.....	.....	.....	.....
500/373	95.4	95.8	95.8	95.8	.....	.....	.....	.....

2. History of Standards Rulemaking for Electric Motors

In the May 2020 Early Assessment Review RFI, DOE stated that it was initiating an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for electric motors and sought information related to that effort. Specifically, DOE sought data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of the foregoing. 85 FR 30878, 30879.

On March 2, 2022, DOE published the preliminary analysis for electric motors. 87 FR 11650 (''March 2022 Preliminary Analysis''). In conjunction with the March 2022 Preliminary Analysis, DOE published a technical support document (''March 2022 Prelim TSD'') which presented the results of the in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine equipment price; (3) energy use; (4) life cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The results presented included the current scope of electric motors regulated at 10 CFR 431.25, in addition to an expanded scope of motors, including electric motors above 500 horsepower, air-over electric motors, and small, non-small-electric-motor, electric motors (''SNEM''). See Chapter 2 of the March 2022 Prelim TSD. DOE requested comment on a number of topics regarding the analysis presented.

DOE received comments in response to the March 2022 Preliminary Analysis from the interested parties listed in Table II–4.

TABLE II–4—MARCH 2022 PRELIMINARY ANALYSIS WRITTEN COMMENTS

Commenter(s)	Reference in this final rule	Docket No.	Commenter type
ABB Motors and Mechanical Inc	ABB	28	Manufacturer.
American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, National Electrical Manufacturers Association, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, Pacific Gas & Electric Company, San Diego Gas & Electric, Southern California Edison.	Electric Motors Working Group.	35, 36	Working Group.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, New York State Energy Research and Development Authority.	Joint Advocates	27	Efficiency Organizations.
Association of Home Appliance Manufacturers; Air-Conditioning, Heating, and Refrigeration Institute.	AHAM and AHRI	25	Industry OEM Trade Association.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	26	Industry OEM Trade Association.
Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE).	CA IOUs	30	Utilities.
Daikin Comfort Technologies Manufacturing Company, L.P	Daikin	32	Manufacturer.
Electrical Apparatus Service Association, Inc	EASA	21	International Trade Association.
Hydraulics Institute	HI	31	Industry Pump Trade Association.
Lennox International	Lennox	29	Manufacturer.
Metglas, Inc	Metglas	24	Materials supplier.
Northwest Energy Efficiency Alliance	NEEA	33	Non-profit organization.
National Electrical Manufacturers Association (NEMA), Association of Home Appliance Manufacturers (AHAM), the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), the Medical Imaging Technology Alliance (MITA), the Outdoor Power Equipment Institute (OPEI), Home Ventilating Institute (HVI) and the Power Tool Institute (PTI).	Joint Industry Stakeholders	23	Industry Trade Associations.
National Electrical Manufacturers Association	NEMA	22	Industry Trade Association.

By letter dated on November 15, 2022, DOE received a joint recommendation for energy conservation standards for electric motors (''November 2022 Joint Recommendation''). The November 2022 Joint Recommendation represented the motors industry, energy efficiency organizations and utilities (collectively, ''the Electric Motors Working Group'').[15] The November 2022 Joint Recommendation addressed energy conservation standards for medium electric motors that are 1–750 hp and polyphase, and air-over medium electric motors. On December 9, 2022, DOE received a supplemental letter to the November 2022 Joint Recommendation from the Electric Motors Working Group. The supplemental letter provided additional guidance on the recommended levels for open medium electric motors rated 100 hp to 250 hp, and a recommended compliance date for standards presented in the November 2022 Joint Recommendation.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[16]

3. Electric Motors Working Group Recommended Standard Levels

This section summarizes the standard levels recommended in the November 2022 Joint Recommendation and supplement by the Electric Motors Working Group and the subsequent procedural steps taken by DOE. Further discussion on scope is provided in section III.B of this document.

Recommendation #1: For NEMA Design A/B medium electric motors (''MEM'') rated up to 500 hp at 60Hz, standard levels as follows:

a. Less than 100 hp—remain at Premium LevelIE3 level [17]

b. 100–250 hp—increase to Super Premium/IE4 level,[18] aligning with European Union (''EU'') Ecodesign Directive 2019/1781 which requires IE4 levels for 75–200 kW motors.

c. Over 250 and up to 500 hp—remain at Premium Level/IE3 level

Separately, because the efficiencies for the IE4 level in IEC 60034–30–1:2014 do not distinguish between enclosed and open motors, the supplemental letter to the November 2022 Joint Recommendation recommended efficiencies for open motors based on the efficiencies for enclosed motors in the IEC standard. The supplemental letter stated that for some horsepower ratings, open motors have different minimum efficiencies which account for the different frame size at a given horsepower rating.

[15] The members of the Electric Motors Working Group included ACEEE, ASAP, NEMA, NRDC, NEEA, PG&E, SDG&E, and SCE.

[16] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for electric motors. (Docket NO EERE–2020–BT–STD–0007, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[17] IE3 efficiency level refers to the 60 Hz efficiency values in Table 8 of IEC 60034–30–1:2014.

[18] IE4 efficiency level refers to the 60 Hz efficiency values in Table 10 of IEC 60034–30–1:2014.

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

Premium efficiency level refers to the efficiency values in NEMA MG 1–2016 Tables 12–12. The current standards for NEMA Design A/B in Table 5 of 10 CFR 431.25 are at Premium efficiency. Accordingly, in this direct final rule, pursuant to the November 22 Joint Recommendation, the energy conservation standards for NEMA Design A/B medium electric motors (''MEM'') less than 100 hp and between 250 to 500 hp, remain at the current levels in 10 CFR 430.25. However, the energy conservation standards for such MEMs between 100 and 250 hp increase to the Super Premium/IE4 Level, which approximately represents a 20 percent reduction of losses over Premium/IE3. Table II–4 presents a comparison of the current and updated standards for MEMs between 100 and 250 hp.

TABLE II–4—CROSSWALK OF CURRENT AND NEW EFFICIENCY STANDARDS FOR MEMS 100–250 HP

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
Current Standards in Table 5 of 10 CFR 431.25								
100/75	94.1	93.6	95.4	95.4	95.0	95.0	93.6	94.1
125/90	95.0	94.1	95.4	95.4	95.0	95.0	94.1	94.1
150/110	95.0	94.1	95.8	95.8	95.8	95.4	94.1	94.1
200/150	95.4	95.0	96.2	95.8	95.8	95.4	94.5	94.1
250/186	95.8	95.0	96.2	95.8	95.8	95.8	95.0	95.0
Updated Standards in this DFR, pursuant to the November 2022 Joint Recommendation								
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

Recommendation #2: For medium electric motors rated over 500 hp and up to 750 hp at 60 Hz, standard levels that correspond to IE3 levels for open and enclosed electric motors.

The current energy conservation standards for MEMs do not contain standards for MEMs with greater than 500 hp. However, in the May 2014 Final Rule, DOE noted that it may consider future regulation of motor types not regulated in the May 2014 Final Rule, including motors greater than 500 hp. *See* 79 FR 30946. As discussed more in section III.B of this document, DOE recently expanded the electric motor test procedure to include motors between 500 hp and 750 hp. Pursuant to the November 2022 Joint Recommendation, this direct final rule establishes standards for motors between 500 and 750 hp at levels consistent with IE3 levels for open and enclosed electric motors.

Recommendation #3: For air-over [19] medium electric motors (''AO–MEMs''), establish two equipment classes and corresponding energy conservation standards for AO MEMs: AO–MEMs in standard NEMA frame sizes and air-over motors in specialized NEMA frame sizes, with standard levels as follows:

a. Standard Frame Size AO–MEMs: For AO MEMs sold in standard NEMA frame sizes aligned with NEMA MG 1–2016, Table 13.2 (open motors) and Table 13.3 (enclosed motors), standard levels consistent with Recommendation #1 (*i.e.,* standard levels for NEMA MG 1 12–12 levels for motors rated less than 100 hp, IE4 levels for motors rated 100 to 250 hp, and MG 1 12–12 levels for motors rated over 250 hp).

b. Specialized Frame Size air-over electric motors: For air-over electric motors sold in smaller, specialized NEMA frame sizes, standard levels consistent with current fire pump efficiency levels (in Table 7 of 10 CFR 431.25), but with constraint on frame size as follows:

[19] *Air-over electric motor* means an electric motor that does not reach thermal equilibrium (*i.e.,* thermal stability), during a rated load temperature test according to section 2 of appendix B, without the application of forced cooling by a free flow of air from an external device not mechanically connected to the motor within the motor enclosure. 10 CFR 430.12.

HP/kW	2 Pole (maximum NEMA frame diameter)		4 Pole (maximum NEMA frame diameter)		6 Pole (maximum NEMA frame diameter)		8 Pole (maximum NEMA frame diameter)	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	74 (48)	.....	82.5 (48)	82.5 (48)	80 (48)	80 (48)	74 (140)	74 (140)
1.5/1.1	82.5 (48)	82.5 (48)	84 (48)	84 (48)	85.5 (140)	84 (140)	77 (140)	75.5 (140)
2/1.5	84 (48)	84 (48)	84 (48)	84 (48)	86.5 (140)	85.5 (140)	82.5 (180)	85.5 (180)
3/2.2	85.5 (140)	84 (48)	87.5 (140)	86.5 (140)	87.5 (180)	86.5 (180)	84 (180)	86.5 (180)
5/3.7	87.5 (140)	85.5 (140)	87.5 (140)	87.5 (140)	87.5 (180)	87.5 (180)	85.5 (210)	87.5 (210)
7.5/5.5	88.5 (180)	87.5 (140)	89.5 (180)	88.5 (180)	89.5 (210)	88.5 (210)	85.5 (210)	88.5 (210)
10/7.5	89.5 (180)	88.5 (180)	89.5 (180)	89.5 (180)	89.5 (210)	90.2 (210)	.....	.....
15/11	90.2 (210)	89.5 (180)	91 (210)	91 (210)	.....	.....	.....	.....
20/15	90.2 (210)	90.2 (210)	91 (210)	91 (210)	.....	.....	.....	.....

The current energy conservation standard for electric motors in 10 CFR 430.25 exempt air-over electric motors from the standards. 10 CFR 430.25(l). In the May 2014 Final Rule, DOE explained that this exemption was due to a lack of information at that time to support the establishment of a test method for air-over electric motors. *See* 79 FR 30946; 78 FR 38474. However, as discussed more in section III.B, DOE recently expanded the electric motor test procedure to include AO–MEMs. Accordingly, pursuant to the November 2022 Joint Recommendation, this direct final rule establishes 2 equipment classes for AO–MEMs (AO–MEMs in standard NEMA frame sizes, and those in specialized NEMA frame sizes) and corresponding standards based on the November 2022 Joint Recommendation. However, based on DOE's review of the market, DOE only observed AO–MEMs up to 250 hp. As such, in this direct final rule, DOE is only establishing standards for AO–MEMs up to 250 hp.

Recommendation #4: For synchronous and inverter-only electric motors, a recommendation to forego establishing standards until an updated test procedure is adopted that better captures the energy-saving benefits of these motors.

The current energy conservation standard for electric motors in 10 CFR 430.25 exempts inverter-only electric motors from the standards. 10 CFR 431.25(l). Similarly, the current energy conservation standards apply to AC induction motors, which do not include synchronous motors.[20] Accordingly, following this recommendation, this direct final rule continues to exempt these types of motors from the energy conservation standards.

Recommendation #5: For the recommended energy conservation standard levels, a compliance date of four (4) years from the date of publication of the final rule.

In the May 2014 Final Rule, DOE provided a 2-year compliance lead time based on the requirements of 42 U.S.C. 6313(b)(4)(B). See 79 FR 30944. DOE notes that EPCA generally requires a 3-year compliance lead time from the effective date of an amended standard under EPCA's 6-year lookback provisions. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)) However, EPCA's direct final rule provision (42 U.S.C. 6295(p)(4)) conveys upon DOE a substantive grant of rulemaking authority, thereby allowing stakeholders to negotiate over more aspects of the energy or water conservation standard, so long as the requirements of 42 U.S.C. 6295(o) are met. *See* 86 FR 70892, 70915. In the past, DOE has looked to joint recommendations to fill in necessary details that EPCA does not place upon the direct final rule process, including compliance periods. DOE's direct final rules have frequently utilized alternative compliance dates, while continuing to ensure that the standards in these rules represent the maximum improvement in energy efficiency that is technologically feasible and economically justified.

After carefully considering the November 2022 Joint Recommendation and supplement for amending the energy conservation standards for electric motors submitted by the Electric Motors Working Group, DOE has determined that these recommendations are in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule.

More specifically, these recommendations comprise a statement submitted by interested persons who are fairly representative of relevant points of view on this matter. In appendix A to subpart C of 10 CFR part 430 (''Appendix A''), DOE explained that to be ''fairly representative of relevant points of view,'' the group submitting a joint statement must, where appropriate, include larger concerns and small business in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.'' Section 10 of appendix A. In reaching this determination, DOE took into consideration the fact that the Joint Recommendation was signed and submitted by a broad cross-section of interests, including a manufacturers' trade association, environmental and energy-efficiency advocacy organizations, and electric utility companies. NYSERDA, a state organization, also submitted a letter supporting the Joint Recommendation. DOE notes that these organizations include the relevant points of view specifically identified by Congress: manufacturers of covered products, States, and efficiency advocates. (42 U.S.C. 6295(p)(4)(A))

DOE also evaluated whether the recommendation satisfies 42 U.S.C. 6295(o), as applicable. In making this determination, DOE conducted an analysis to evaluate whether the potential energy conservation standards under consideration achieve the maximum improvement in energy efficiency that is technologically

[20] In the May 2014 Final Rule, DOE chose not to establish standards for inverter-only electric motors because of the then absence of a reliable and repeatable method to test them for efficiency, but DOE noted that if a test procedure became available, DOE may consider setting standards for inverter-only electric motors at that time. 79 FR 30945. DOE recently expanded the electric motor test procedure to include inverter-only and synchronous electric motors. *See* 87 FR 63600–63605. Similarly, DOE expanded the scope of the test procedure to include synchronous electric motors. 87 FR 63601–63605. However, pursuant to the November 2022 Joint Recommendation, DOE is not separately regulating inverter-only and synchronous electric motors in this direct final rule. Rather, DOE is only considering the substitution effects of switching to these electric motors if higher standards for MEMs are established. More discussion on inverter-only and synchronous electric motors may be found in sections IV.A and F of this document.

feasible and economically justified and result in significant energy conservation. The evaluation is the same comprehensive approach that DOE typically conducts whenever it considers potential energy conservation standards for a given type of product or equipment.

Upon review, the Secretary determined that the November 2022 Joint Recommendation comports with the standard-setting criteria set forth under 42 U.S.C. 6295(p)(4)(A). Accordingly, the Electric Motors Working Group recommended efficiency levels were included as the ''recommended TSL'' for electric motors (see section V.A for description of all of the considered TSLs). The details regarding how the Electric Motors Working Group-recommended TSLs comply with the standard-setting criteria are discussed and demonstrated in the relevant sections throughout this document.

In sum, as the relevant criteria under 42 U.S.C. 6295(p)(4) have been satisfied, the Secretary has determined that it is appropriate to adopt the Electric Motors Working Group-recommended amended energy conservation standards for Electric Motors through this direct final rule. Also, in accordance with the provisions described in section II.A of this document, DOE is simultaneously publishing a NOPR proposing that the identical standard levels contained in this direct final rule be adopted.

III. General Discussion

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process for the March 2022 Preliminary Analysis.

Lennox commented that long-standing DOE practice recognizes the benefit of establishing an appropriate test procedure before undertaking an energy conservation standards rulemaking. Lennox commented that the March 2022 Preliminary Analysis was issued in February 2022 while comments on the test procedure NOPR were due. As such, Lennox suggested that DOE cutting corners on the regulatory process undermines the accuracy and reliability of data contained in the March 2022 Preliminary Analysis TSD. (Lennox, No. 29 at p. 4–5) The Joint Industry Stakeholders commented that the process DOE is using for the electric motor test procedure and standards undermines the value of early stakeholder engagement. Specifically, they claimed that DOE is: (1) shortening comment periods; (2) overlapping comment periods; and (3) condensing the rulemaking process. The Joint Industry Stakeholders noted that DOE published the March 2022 Preliminary Analysis two months after issuing a proposed test procedure. Furthermore, the Joint Industry Stakeholders commented that there were numerous comments challenging DOE's proposed test procedure, which resulted in significant changes. They commented that manufacturers and others lack enough time with the proposed test procedure to fully understand or comment upon its impact on potential energy conservation standards, especially for SNEMs where they stated that DOE has done no testing. The Joint Industry Stakeholders commented that they recognize and support DOE's interest in moving rulemakings forward, especially rules such as the electric motor standards and test procedures, which have missed statutory deadlines. However, they stated that DOE should have released the proposed test procedure earlier so that DOE could receive feedback on the test procedure before proceeding with its resource-intensive preliminary analysis. (Joint Industry Stakeholders, No. 23 at p. 9–10)

Appendix A establishes procedures, interpretations, and policies to guide DOE in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under EPCA. DOE has maintained the process and timeline for the electric motors test procedure and energy conservation standards based on appendix A.

Appendix A requires that DOE provide for early input from stakeholders so that the initiation and direction of rulemaking is informed by comments from interested parties. Appendix A, section 1(a). As discussed in section II.B.2 of this document, DOE provided opportunity for comment for these energy conservation standards through the May 2020 Early Assessment Review RFI, which had a 30-day comment period, and the March 2022 Preliminary Analysis, which had a 60-day comment period. Further, DOE provided multiple opportunities for stakeholder comments and inputs through the test procedure rulemaking process; DOE published a request for information (85 FR 34111; June 3, 2020 ''June 2020 RFI''), which had a 45-day comment period, and DOE published a test procedure NOPR (86 FR 71710; December 17, 2021 ''December 2021 NOPR''), which originally had a 60-day comment period, which was extended to a 75-day comment period. 87 FR 6436. Even though some of these comment periods overlapped to some extent, DOE has nonetheless provided ample opportunity for stakeholder review and comments and has considered such comments and recommendations in this notice.

Appendix A also generally requires that test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards. Appendix A, section 8(d)(1). Pursuant to 42 U.S.C. 6295(p)(4), published elsewhere in the **Federal Register** is a NOPR accompanying this direct final rule, which proposes standards identical to those in this direct final rule. On October 19, 2022, DOE published the electric motor test procedure final rule. (''October 2022 Final Rule''). Thus, in accordance with appendix A section 8(d)(1), the October 2022 Final Rule prior was published 180 days prior to publication of this energy conservations standards direct final rule and the accompanying NOPR.

B. Scope of Coverage and Equipment Classes

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q))

This document covers certain equipment meeting the definition of electric motors as defined in 10 CFR 431.12. Specifically, the definition for ''electric motor'' is ''a machine that converts electrical power into rotational mechanical power.'' *Id.* Electric motors are used in a wide range of applications in commercial building and in the industrial sector (*e.g.,* chemicals, primary metals, food, paper, plastic/rubber, petroleum refining, and wastewater), including: fans, compressors, pumps, material handling equipment, and material processing equipment.

Currently, DOE regulates medium electric motors (''MEMs'') falling into the NEMA Design A, NEMA Design B, NEMA Design C, and fire pump motor categories and those electric motors that meet the criteria specified at 10 CFR 431.25(g). 10 CFR 431.25(h)–(j). Section

431.25(g) specifies that the relevant standards apply only to electric motors, including partial electric motors, that satisfy the following criteria:

(1) Are single-speed, induction motors;
(2) Are rated for continuous duty (MG 1) operation or for duty type S1 (IEC)
(3) Contain a squirrel-cage (MG 1) or cage (IEC) rotor;
(4) Operate on polyphase alternating current 60-hertz sinusoidal line power;
(5) Are rated 600 volts or less;
(6) Have a 2-, 4-, 6-, or 8-pole configuration;
(7) Are built in a three-digit or four-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent);
(8) Produce at least one horsepower (0.746 kW) but not greater than 500 horsepower (373 kW), and
(9) Meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N, NE, NEY, NY or H, HE, HEY, HYmotor.[21]

10 CFR 431.25(g).

The definitions for NEMA Design A motors, NEMA Design B motors, NEMA Design C motors, fire pump electric motors, IEC Design N motor and IEC Design H motor, as well as ''E'' and ''Y'' designated IEC Design motors, are codified in 10 CFR 431.12. DOE has also currently exempted certain categories of motors from standards. The exemptions are as follows:

(1) Air-over electric motors;
(2) Component sets of an electric motor;
(3) Liquid-cooled electric motors;
(4) Submersible electric motors; and
(5) Inverter-only electric motors.

10 CFR 431.25(l)

On October 19, 2022, DOE published the electric motors test procedure final rule. 87 FR 63588 (''October 2022 Final Rule''). As part of the October 2022 Final Rule, DOE expanded the test procedure scope to additional categories of electric motors that currently do not have energy conservation standards. 87 FR 63588, 63593–63606. The expanded test procedure scope included the following:

- Electric motors having a rated horsepower above 500 and up to 750 hp that meets the criteria listed at § 431.25(g), with the exception of criteria § 431.25(g)(8) to air-over electric motors (''AO–MEMs''), and inverter-only electric motors;
- Small, non-Small-Electric Motor, Electric Motors (''SNEM''), which:

(a) Is not a small electric motor, as defined at § 431.442 and is not a dedicated pool pump motors as defined at § 431.483;
(b) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);
(c) Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power;
(d) Is rated for 600 volts or less;
(e) Is a single-speed induction motor capable of operating without an inverter or is an inverter-only electric motor;
(f) Produces a rated motor horsepower greater than or equal to 0.25 horsepower (0.18 kW); and
(g) Is built in the following frame sizes: any two-, or three-digit NEMA frame size (or IEC equivalent) if the motor operates on single-phase power; any two-, or three-digit NEMA frame size (or IEC equivalent) if the motor operates on polyphase power, and has a rated motor horsepower less than 1 horsepower (0.75 kW); or a two-digit NEMA frame size (or IEC metric equivalent), if the motor operates on polyphase power, has a rated motor horsepower equal to or greater than 1 horsepower (0.75 kW), and is not an enclosed 56 NEMA frame size (or IEC metric equivalent).

- SNEMs that are air-over electric motors (''AO–SNEMs'') and inverter-only electric motors;
- Synchronous electric motors, which:

(a) Is not a dedicated pool pump motor as defined at § 431.483 or is not an air-over electric motor;
(b) Is a synchronous electric motor;
(c) Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power;
(d) Is rated 600 volts or less; and
(e) Produces at least 0.25 hp (0.18 kW) but not greater than 750 hp (559 kW).

- Synchronous electric motors that are inverter-only electric motors.

In the October 2022 Final Rule, DOE noted that, for these motors newly included within the scope of the test procedure for which there was no established energy conservation standard, manufacturers would not be required to use the test procedure to certify these motors to DOE until such time as a standard is established. 87 FR 63591.[22] Further, the October 2022 Final Rule continued to exclude the following categories of electric motors:

- inverter-only electric motors that are air-over electric motors;
- component sets of an electric motor;
- liquid-cooled electric motors; and
- submersible electric motors.

In the March 2022 Preliminary Analysis, DOE analyzed the additional motors now included within the scope of the test procedure after the October 2022 Final Rule.[23] See sections 2.2.1 and 2.2.3.2 of the March 2022 Prelim TSD. This included MEMs from 1–500 hp, AO–MEMs, SNEMs, and AO–SNEMs. However, consistent with the November 2022 Joint Recommendation, this direct final rule establishes new and amended standards for only a portion of the scope analyzed in the March 2022 Preliminary Analysis and included within the scope of the test procedure after the October 2022 Final Rule. Specifically, in this direct final rule, DOE is only amending standards for certain MEMs and establishing new standards for AO–MEMs and certain air-over polyphase motors. DOE may address in a future rulemaking energy conservation standards for electric motor equipment classes not addressed in this direct final rule. Table III–1 summarizes the equipment class groups (''ECG'') DOE established pursuant to the November 2022 Joint Recommendation and analyzed in this direct final rule. Further discussion on equipment classes is provided in section IV.A.3 of this document.

TABLE III–1—EQUIPMENT CLASS GROUPS CONSIDERED

ECG	ECG motor design type	Motor topology	Horsepower rating	Pole configuration	Enclosure
1	MEM 1–500 hp, NEMA Design A & B	Polyphase	1–500	2, 4, 6, 8	Open. Enclosed.

[21] DOE added the ''E'' and ''Y'' designations for IEC Design motors into § 431.25(g) in the October 2022 Final Rule. 87 FR 63596, 636597, 6306.

[22] However, manufacturers making voluntary representations respecting the energy consumption or cost of energy consumed by such motors are required to use the DOE test procedure for making such representations beginning 180 days following publication of the October 2022 Final Rule. *Id.*

[23] At the time, most of these motors had been proposed for inclusion in the scope of the test procedure in the December 2021 Test Procedure NOPR. 86 FR 71710.

TABLE III–1—EQUIPMENT CLASS GROUPS CONSIDERED—Continued

ECG	ECG motor design type	Motor topology	Horsepower rating	Pole configuration	Enclosure
2	MEM 501–750 hp, NEMA Design A & B	Polyphase	501–750	2, 4	Open. Enclosed.
3	AO–MEM (Standard Frame Size)	Polyphase	1–250	2, 4, 6, 8	Open. Enclosed.
4	AO–Polyphase (Specialized Frame Size)	Polyphase	1–20	2, 4, 6, 8	Open. Enclosed.

As described in section II.B.3 of this document, this direct final rule establishes new equipment classes for AO–MEMs, AO–polyphase motors, and MEMs between 500 and 750 hp, and amends the standards for the 100–250 hp MEMs equipment classes.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered 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. On October 19, 2022, DOE published the electric motor test procedure final rule. 87 FR 63588 (''October 2022 Final Rule''). As described previously, the October 2022 Final Rule expanded the types of motors included within the scope of the test procedure, including the new classes of electric motors for which DOE is establishing energy conservation standards in this final rule. DOE's test procedures for electric motors are currently prescribed at appendix B to subpart B of 10 CFR part 431 (''appendix B'').

DOE's energy conservation standards for electric motors are currently prescribed at 10 CFR 431.25. DOE's current energy conservation standards for electric motors are expressed in terms of nominal full-load efficiency.

D. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(i) and 7(b)(1) (''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. Section 7(b)(2)–(5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for electric motors, 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 direct final rule technical support document (''TSD'').

2. Maximum Technologically Feasible Levels

When DOE adopts 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. 6316(a); 42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for electric motors, 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 III.C of this direct final rule and in chapter 5 of the direct final rule TSD.

E. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to electric motors purchased in the 30-year period that begins in the first year of compliance with the amended standards (2027–2056).[24] The savings are measured over the entire lifetime of electric motors purchased in the 30-year analysis 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 an equipment would likely evolve in the absence of new and amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for electric motors. 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.[25] DOE's

[24] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this direct final rule are described in section V.A of this document. DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[25] 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).

approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.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. 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, health benefits, and the need to confront the global climate crisis, among other factors.

As stated, the standard levels adopted in this direct final rule are projected to result in national energy savings of 3.0 quads, the equivalent of the electricity use of 31 million homes in one year. Based on the amount of FFC savings, the corresponding reduction in emissions, and need to confront the global climate crisis, DOE has determined the energy savings from the standard levels adopted in this direct final rule are ''significant'' within the meaning of 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of an equipment(including its installation) and the operating costs (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 Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H of this document, DOE uses the NIA spreadsheet model to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted 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 standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60

days of the publication of a rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(ii)) To assist the Department of Justice (''DOJ'') in making such a determination, DOE transmitted copies of its proposed rule and the NOPR TSD to the Attorney General for review, with a request that the DOJ provide its determination on this issue. In its assessment letter responding to DOE, DOJ concluded that the energy conservation standards for electric motors are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this direct final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted 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 adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K the estimated emissions impacts are reported in section 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 any other factors that the Secretary deems to be relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) DOE's LCC and PBP analyses generate values used to calculate the effects that 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. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this direct final rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regards to electric motors. Separate subsections address each component of DOE's analyses. In this direct final rule, DOE is only addressing comments and analysis specific to the scope of motors provided in the November 2022 Joint Recommendation. As such, any analysis and comments related to SNEMs and AO–SNEMs will be addressed in a separate NOPR.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket/EERE-2020-BT-STD-0007.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*'') 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 electric motors. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the direct final rule TSD for further discussion of the market and technology assessment.

1. Scope of Coverage

This document covers equipment meeting the definition of electric motors as defined in 10 CFR 431.12. Specifically, the definition for ''electric motor'' is ''a machine that converts electrical power into rotational mechanical power.'' *Id.*

In the March 2022 Preliminary Analysis, DOE presented analysis for the current scope of electric motors regulated at 10 CFR 431.25, as well as expanded scope proposed in the December 2021 test procedure NOPR, which included air-over electric motors and SNEMs. See Chapter 2 of the March 2022 Prelim TSD. Since, DOE has published the October 2022 Final Rule, which expanded the scope of the test procedures to include such motors, as discussed in detail in section III.B of this direct final rule.

In response to the scope presented in the March 2022 Preliminary Analysis, DOE received a number of comments, which are discussed in the subsections

below. In this direct final rule, DOE is only addressing comments and analysis specific to the scope of motors provided in the November 2022 Joint Recommendation, which includes MEMs and polyphase air-over electric motors.

a. Motor Used as a Component of a Covered Product or Equipment

Generally, Lennox noted that DOE should apply a finished-product approach to energy efficiency regulations. Specifically, Lennox commented that system performance standards of HVAC–R products include the energy used by the electric motors, and that increasing the stringency of component-level regulation does not have any efficiency benefit when the ultimate efficiency is measured at the systems level and manufacturers adjust other equipment parameters based on the overall system level of performance, offsetting increased motor costs by reducing other component costs and efficiencies to mitigate adverse financial impacts on consumers.[26] Lennox stated that mandating additional testing and certification of motors used in already-regulated HVAC–R products would not save energy and create needless testing, paperwork, and record-keeping requirements that raise consumer costs. (Lennox, No. 29 at p. 2–3) Lennox elaborated that the HVAC–R standards in place will drive more efficient design of relevant components, including motors, without unnecessary further regulation of components, and that the March 2022 Preliminary Analysis has not adequately accounted for these cumulative manufacturer burdens.[27] (Lennox, No. 29 at p. 6)

AHAM and AHRI strongly opposed DOE's plan to expand the existing scope of coverage of electric motors to include motors destined for particular applications in finished goods, and instead recommended that DOE should apply a finished-product approach to energy efficiency regulations. (AHAM, AHRI, No. 25 at p. 7–9) NEMA commented that further elevations to component efficiencies or changes to scope for electric motors energy conservation standards will lead to diminishing returns, and are therefore less practical, because previous electric motors rulemakings adequately addressed concerns for ''application and performance of existing equipment'' to the maximum extent practical. NEMA stated that DOE should allow application-dependent solutions like power drive systems to take over from minimum energy conservation standards as the most-appropriate and best-fit market transformation vehicles, but they must be selected and installed with due regard for their application-specific nature, which calls for ''other than regulatory action'' on the part of DOE. (NEMA, No. 22 at p. 26)

Daikin commented that they do not support the regulation of electric motors that are components of a covered equipment such as HVAC equipment. Daikin added that regulating embedded components creates both apparent and likely unforeseen issues. For HVAC manufacturers, Daikin commented that regulating components reduces design flexibility and may not result in optimal design for overall system performance. Daikin stated that standards for HVAC equipment are regularly evaluated by DOE to ensure regulations are aligned with the most cost-effective product for consumers, and HVAC manufacturers generally respond by producing a class of equipment at these federal minimum efficiency levels. As such, Daikin stated that regulating an embedded component will not improve the overall product's energy efficiency. (Daikin, No. 32 at p. 1)

On the other hand, the Joint Advocates commented in support of regulating electric motors that are components of covered equipment. The Joint Advocates stated that there is value in regulating the motors separately. The Joint Advocates agreed with DOE that different motor efficiency levels may be cost-effective for different covered products, and the presence of electric motors in covered equipment does not preclude the possibility of cost-effective energy standards for electric motors individually. Furthermore, the Joint Advocates commented that absent standards for motors that are used in covered equipment, consumers may get stuck with inefficient replacement motors. Finally, the Joint Advocates commented that motors used in covered equipment are often purchased by the original equipment manufacturer (''OEM'') from a motor manufacturer, and thus, exempting motors used in covered equipment would likely create enforcement challenges since it would be difficult to determine a given motor's end use application. (Joint Advocates, No. 27 at p. 5)

DOE understands that the majority of the concerns summarized in this section and provided separately by commenters stems from DOE potentially regulating SNEMs and AO–SNEMs. This direct final rule does not address SNEMs or AO–SNEMs as part of the scope. DOE may consider in a future rulemaking energy conservation standards for electric motor equipment classes not addressed in this direct final rule, including SNEMs and AO–SNEMs. If so, DOE will address these comments and concerns as part of any future rulemaking. As such, in this final rule, DOE is generally addressing comments regarding electric motors scope and what DOE has the authority to regulate.

As discussed in the October 2022 Final Rule, EPCA, as amended through EISA 2007, provides DOE with the authority to regulate the expanded scope of motors addressed in this rule. 87 FR 63588, 63596. Before the enactment of EISA 2007, EPCA defined the term ''electric motor'' as any motor that is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the NEMA, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987. (*See* 42 U.S.C. 6311(13)(A) (2006)) Section 313(a)(2) of EISA 2007 removed that definition and the prior limits that narrowly defined what types of motors would be considered as electric motors. In its place, EISA 2007 inserted a new ''Electric motors'' heading, and created two new subtypes of electric motors: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). (42 U.S.C. 6311(13)(A)–(B) (2011)) In addition, section 313(b)(2) of EISA 2007 established energy conservation standards for four types of electric motors: general purpose electric motors (subtype I) (*i.e.,* subtype I motors) with a power rating of 1 to 200 horsepower; fire pump motors; general purpose electric motor (subtype II) (*i.e.,* subtype II motors) with a power rating of 1 to 200 horsepower; and NEMA Design B, general purpose electric motors with a power rating of more than 200 horsepower, but less than or equal to 500 horsepower. (42 U.S.C. 6313(b)(2)) The term ''electric motor'' was left undefined. However, in a May 4, 2012 final rule amending the electric

[26] Lennox made these comments in the context of air-over and inverter-only motors included within HVACR products, requesting that DOE maintain the exemptions to the energy conservation standards for these motors contained in 10 CFR 431.25(l). (Lennox, No. 29 at p. 2) DOE addresses Lennox's comments regarding the exemption for these specific motors in sections IV.1.b and d of this document.

[27] Lennox also commented that DOE should continue exempting SEMs used as a component in covered equipment (specifically, HVACR equipment) from the energy conservation standards for electric motors, and that including SNEMs in the energy conversation standards for electric motors would circumvent Congressional intent to exempt from regulation small electric motors that are components of EPCA covered products and covered equipment. (Lennox, No. 29 at p. 3). As noted previously, DOE is not including SNEMs within the scope of this direct final rule. SNEMs may be addressed in a future rulemaking, and DOE will consider such comments in that rulemaking.

motors test procedure (the May 2012 Final Rule), DOE adopted the broader definition of ''electric motor'' currently found in 10 CFR 431.12 because DOE noted that the absence of a definition may cause confusion about which electric motors are required to comply with mandatory test procedures and energy conservation standards, and to provide DOE with the flexibility to set energy conservation standards for other types of electric motors without having to continuously update the definition of ''electric motors'' each time DOE sets energy conservation standards for a new subset of electric motors. 77 FR 26608, 26613.

The provisions of EPCA make clear that DOE may regulate electric motors ''alone or as a component of another piece of equipment.'' See 42 U.S.C. 6313(b)(1) & (2) (providing that standards for electric motors be applied to electric motors manufactured ''alone or as a component of another piece of equipment'') In contrast, Congress exempted small electric motors (SEMs) [28] that are a component of a covered product or a covered equipment from the standards that DOE was required to establish under 42 U.S.C. 6317(b). Congress did not, however, similarly restrict electric motors. Unlike SEMs, the statute does not limit DOE's authority to regulate an electric motor with respect to whether ''electric motors'' are stand-alone equipment items or components of a covered product or covered equipment. Rather, Congress specifically provided that DOE could regulate electric motors that are components of other covered equipment in the standards established by DOE.

Additionally, EPCA requires that 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. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) In this direct final rule, DOE performs the necessary analyses to determine whether amended or new standards would meet the aforementioned criteria. Further, DOE has determined that the amended standards provide cost-effective standards that would result in the significant conservation of energy. Further discussion on double-counting as it relates to energy savings is provided in section IV.F of this document. Further discussion on the analytical results and DOE's justification is provided in section V.C of this document.

b. Air-Over Electric Motors

NEEA supported the inclusion of air-over electric motors in the scope of the standards, noting that including them will allow comparison of performance and informed purchase decisions. (NEEA, No. 33 at p. 2) The CA IOUs supported the inclusion of Totally Enclosed Air Over (''TEAO'') motors in the analysis. In addition, the CA IOUs commented that they support establishing standards for air-over motors that otherwise meet the description of regulated motors (*i.e.,* ''AO–MEM'') consistent with the levels for totally enclosed fan cooled (''TEFC'') electric motors. (CA IOUs, No. 30 at p. 1–2)

Lennox commented that DOE must continue the current electric motor exemptions specified in 10 CFR 431.25(l) for air-over, particularly when those motors are used in already-regulated HVACR products. (Lennox, No. 29 at p. 3) AHRI commented that air-over motors are explicitly exempted from regulation in 10 CFR 431.25(l), and that DOE has not overcome the challenges to include these exempted products, procedurally or technically. (AHRI, No. 26 at p. 1, 2)

DOE is covering air-over electric motors under its ''electric motors'' authority. (42 U.S.C. 6311(1)(A)) As previously discussed, the statute does not limit DOE's authority to regulate an electric motor with respect to whether they are stand-alone equipment items or as components of a covered product or covered equipment. See 42 U.S.C. 6313(b)(1) (providing that standards for electric motors be applied to electric motors manufactured ''alone or as a component of another piece of equipment'').

DOE's previous determination in the December 2013 Final Rule to exclude air-over electric motors from scope was due to insufficient information available to DOE at the time to support establishment of a test method. *See* 78 FR 75962, 75974–75975. Since that time, NEMA published a test standard for air-over motors in Section IV, ''Performance Standards Applying to All Machines,'' Part 34 ''Air-Over Motor Efficiency Test Method'' of NEMA MG 1–2016 (''NEMA Air-over Motor Efficiency Test Method''). The air-over method was originally published as part of the 2017 NEMA MG–1 Supplements and is also included in the latest version of NEMA MG 1–2016. In the October 2022 Final Rule, DOE used the aforementioned argument to include air-over electric motors into the test procedure scope and establish test procedures. *See* 87 FR 63588, 63597. In this direct final rule, DOE has analyzed the scope of electric motors based on the finalized test procedures from the October 2022 Final Rule, and amended energy conservation standards based on the November 2022 Joint Recommendation.

c. AC Induction Electric Motors Greater Than 500 Horsepower

NEEA commented in support of expanding the scope to include AC induction electric motors greater than 500 horsepower to identify their energy use, potential for energy savings, price, and prevalence in the market today. NEEA added that these motors consume a significant amount of energy, and that motor efficiency generally improves as a function of motor size, so it may be possible to establish higher efficiency standards for greater than 500 HP motors. (NEEA, No. 33 at p. 3)

NEMA stated that energy conservation standards for >500 HP motors would likely not be justified because of how tiny their market share is. It also stated that there are unique performance requirements applied to these motors that require custom designs that limit efficiency. NEMA stated that, at minimum, if a motor has one of the following special requirements, it should not be subject to standards; those special requirements are: <550 percent locked-rotor current, minimum locked rotor steady state supply voltage of <80 percent, ability to accelerate a moment of inertia greater than the moment of inertia defined by NEMA, ability to operate outside the range of −20 °C to +60 °C, ability to operate above 4,000 m above sea level, a load-torque envelope with a minimum torque of 25 percent of rated torque with a square shaped T − n^2 up to a max load, ability to start consecutively from cold three times or from hot two times, being a multi-speed motor, submersible, smoke extraction motor, explosion-proof motor, or a motor used in nuclear plants. (NEMA, No. 22 at p. 9–10)

Since the comments to the March 2022 Preliminary Analysis, the Electric Motors Working Group, which included NEEA and NEMA, recommended standards for medium electric motors rated over 500 hp and up to 750 hp at 60 Hz (Recommendation #2). The scope of medium electric motors includes those electric motors that currently meet

[28] Congress defined what equipment comprises a small electric motor (''SEM'')—specifically, ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.'' (42 U.S.C. 6311(13)(G)) (DOE clarified, at industry's urging, that the definition also includes motors that are IEC metric equivalents to the specified NEMA motors prescribed by the statute. *See* 74 FR 32059, 32061–32062; 10 CFR 431.442.

10 CFR 431.25(g), but expanded to include motor horsepower >500 hp but less than 750 hp. Accordingly, in this direct final rule, DOE is including the aforementioned scope of electric motors for consideration of new standards, based on the November 2022 Joint Recommendation. Specifically, in the November 2022 Joint Recommendation, the Electric Motors Working Group agreed on establishing efficiency levels corresponding to 60 Hz NEMA Premium levels for motors rated over 500 hp and up to 750 hp. The Electric Motors Working Group noted that extending the horsepower range of electric motors subject to energy conservation standards would be beneficial in aligning with EU Ecodesign Directive 2019/1781,[29] which covers motors up to 1000 kW (1341 hp) at NEMA Premium levels, and for which manufacturers are making investments to comply.

d. AC Induction Inverter-Only and Synchronous Electric Motors

NEEA commented in support of expanding the scope of standards to synchronous and inverter-only motors to identify their energy use, potential for energy savings, price, and prevalence in the market today. NEEA recommended to include these motors in the same equipment classes are induction motors. In addition, NEEA recommended not to establish stricter efficiency requirements for these motors based on full-load efficiency because these motors allow energy savings at part load conditions. (NEEA, No. 33 at p. 3) NEMA stated that synchronous motors should have their own equipment class until analysis concludes they are not needed. NEMA suggested DOE make an ''other than regulatory action'' to save energy at the application and reference NEMA Standard 10011–22 with regards to the power index. (NEMA, No. 22 at p. 8)

CA IOUs supported including inverter-only and synchronous electric motors, but in the same equipment class as currently regulated induction motors. The CA IOUs recommended convening an Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') Working Group to finalize a test procedure and part-load metric for these motors before finalizing a test procedure and energy conservation standards rulemaking. (CA IOUs, No. 30 at p. 2) The Joint Advocates also commented supporting analyzing synchronous motors jointly with currently covered motors and recommended that DOE also analyze synchronous motors jointly with relevant SNEM and AO motors. The Joint Advocates commented that synchronous motors represent the most efficient motors on the market and highlighted the potential energy savings opportunities facilitated by market shifts to synchronous motors. In addition, the Joint Advocates commented that the potential life-cycle cost savings associated with synchronous motor substitutions should be directly accounted for when evaluating potential amended standards for electric motors. (Joint Advocates, No. 27 at p. 2) Similarly, the CA IOUs also provided the following supporting data to show that synchronous and inverter-only electric motor are designed, marketed, capable, and are being used to replace induction motors: (1) manufacturer reference tables that promote the direct replacement of currently regulated induction motors with synchronous and inverter-only motors (2) data showing synchronous motor performance exceeding a best-in-class copper cage induction motor paired with a commercially available VFD (which the CA IOUs stated corroborates the PTSD savings estimates for synchronous electric motors), and (3) a summary of case studies docketed in response to the December 2021 test procedure NOPR. The CA IOUs commented that this supporting data demonstrates the use of synchronous and inverter-only motors in applications where National Electrical Manufacturers Association (NEMA) Design B motors are typically used. (CA IOUs, No. 30 at p. 2–3)

AHAM and AHRI commented that if DOE includes inverter-only and synchronous motors in the scope of the ECS, it should first publish a preliminary analysis or NODA for these motors before proceeding to a NOPR. (AHAM, AHRI, No. 25 at p. 2) Lennox commented that DOE imposing increased costs on inverter-only motors by additional regulation may inhibit HVACR manufacturer use of these motors in innovative applications. Further, Lennox commented that DOE ceasing its exemptions for inverter-only motors, and thereby unduly-burdening manufacturers and forcing higher HVACR product costs on consumers with component-level regulation, is particularly inappropriate during an ongoing pandemic where inflation has been at a 40-year high. (Lennox, No. 29 at p. 2–3) NEMA stated that by regulating synchronous motors, DOE is regulating both the required adjustable speed drive and the motor itself. It stated that this is unnecessary and poorly conceived, and that synchronous motors do not generally conform to the torque-speed curves required by NEMA and IEC Designs. (NEMA, No. 22 at p. 7) In addition, NEMA stated that inverter-only induction motors have characteristics warranting their own equipment class. It stated these motors are used exclusively for constant torque or constant HP applications and that certain applications have performance requirements like acceleration, deceleration, and overload capability for optimal control of a process. NEMA also stated that the performance requirements go beyond a single steady-state load condition that the test procedure uses, and that targeting a specific operating point's efficiency could restrict the other torque and thermal requirements of these motors. It also states that since the metric includes the losses of the inverter, these motors will have a lower maximum potential efficiency than typical induction motors. NEMA pointed to IEC 60034–30–2 as an example for efficiency values that pertain specifically to variable-speed motors. (NEMA, No. 22 at p. 8–9)

In this direct final rule, DOE is not separately regulating or establishing standards for inverter-only and synchronous electric motors. As a sensitivity analysis, DOE notes that it analyzed the impacts of potentially switching to these electric motors as a result of higher standards that will be finalized for MEMs 100–250 hp, NEMA Design A & B in this DFR; further discussion is provided in section IV.F of this document.

e. Submersible Electric Motors

NEEA and HI recommended excluding submersible motors from the scope of the standards due to the lack of repeatable and representative test procedures. (NEEA, No. 33 at p. 4; HI, No. 31 at p. 1) CA IOUs commented that they do not support including submersible electric motors, and that DOE should collaborate with industry stakeholders in developing a test procedure for this motor category. (CA IOUs, No. 30 at p. 2) Finally, NEMA stated that submersible electric motors should be removed from the rulemaking. (NEMA, No. 22 at p. 9) In the October 2022 Final Rule, DOE did not finalize a test method for submersible electric motors. *See* 87 FR 63588, 63605. Moreover, the November 2022 Joint Recommendation did not recommend energy conservation standards for submersible electric motors. Accordingly, submersible electric motors continue to be excluded

[29] In terms of standardized horsepowers, this would correspond to 100–250 hp when applying the guidance from 10 CFR 431.25(k) (and new section 10 CFR 431.25(q)).

from the test procedure and are not included in this standards direct final rule.

2. Test Procedure and Metric

DOE received comments regarding the test procedure and efficiency metric for electric motors subject to these energy conservation standards.

NEMA requested an SNOPR for the test procedure and requested that the energy conservation standards rulemaking not move forward until the test procedure is finished. (NEMA, No. 22 at p. 2). DOE published the electric motor test procedure final rule on October 19, 2022. 87 FR 63588.

NEEA commented that, until DOE revises their test procedure and efficiency metric to account for part-load operating conditions, they do not recommend that DOE establish stricter efficiency requirements for synchronous electric motors and inverter-only electric motors. (NEEA, No. 33 at p. 4,5) CA IOUs commented similarly, strongly encouraging DOE to adopt the use of a metric that is representative of part-load performance for inverter-only and synchronous electric motors. CA IOUs provided data in support of the use of a part-load metric for inverter-only and synchronous electric motor applications to better reflect how these motors operate in the field. (CA IOUs, No. 30 at p. 2) The Joint Advocates explained that inverter-only AC motors may not have a higher full-load efficiency than a comparable single-speed motor, but they may save energy by reducing motor speed and resulting input power at partial loads. Therefore, they commented that because the efficiency is evaluated only at full load, inverter-only motors would be at a disadvantage as the input losses associated with the inverter would be included in the efficiency calculation, but the potential energy savings resulting from its speed control capabilities would not be captured. (Joint Advocates, No. 27 at p. 3) NEMA commented that DOE should transition away from a single point efficiency metric and instead should develop a Power Index that incorporates the savings associated with power drive systems. NEMA commented that by applying a fixed speed efficiency testing at full load metric, the DOE misses the true opportunity for energy savings. NEMA explained that while at certain load points the motor losses might be a fraction (0.5 percent) lower, the application of a PDS would save 25–50 percent of power in the integral horsepower market and that these savings dwarf the 0.8 percent reduction associated with EL2. (NEMA, No. 22 at p. 5)

The currently prescribed test procedure in appendix B requires testing electric motors at full-load only. In the October 2022 Final Rule, DOE argued that variable-load applications primarily operate in a range where efficiency is relatively flat as a function of load, and therefore measuring the performance of these motors at full-load is representative of an average use cycle. *See* 87 FR 63588, 63620. Moreover, in this direct final rule, DOE is not proposing to separately regulate inverter-only and synchronous electric motors, but rather DOE is considering substitution effects to these motors for higher efficiency standards for MEMs.

Lennox commented that there would be insufficient testing facilities to accommodate significantly expanded motor product classes, such as DOE expanding motor regulations into SNEMs, air-over, synchronous or inverter-only motors, specifically in view of the proposal to require third-party laboratory testing. (Lennox, No. 29 at p. 5–6) The Joint Industry Stakeholders commented that DOE proposed that electric motors certified to the new test procedure could only be certified by 3rd party test labs, instead of certified labs in accordance with longstanding recognized practice. They stated that special and definite-purpose motors potentially classified as SNEM could not possibly be tested, redesigned, retested, certified, and made available for OEM use by the few third-party small electric motor certification bodies recognized by DOE today. (Joint Industry Stakeholders, No. 23 at p. 9) As discussed in section IV.A.1, in this direct final rule, DOE is only amending standards for certain MEMs and establishing standards for AO–MEMs and certain air-over polyphase motors. Further, DOE understands the Joint Industry Stakeholders comments to be directed at the proposals from the test procedure rulemaking. Since this proposal, DOE published the October 2022 Final Rule, where DOE decided to not adopt its proposal to require the use of an independent testing program, and to instead continue permitting the use of accredited labs as currently allowed through National Institute of Standards and Technology (''NIST'') and National Voluntary Laboratory Accreditation Program (''NVLAP'') accreditation. *See* 87 FR 62588, 63628–63629.

3. Equipment Classes

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q))

Due to the number of electric motor characteristics (*e.g.,* horsepower rating, pole configuration, and enclosure), in the March 2022 Preliminary Analysis, DOE used two constructs to help develop appropriate energy conservation standards for electric motors: ''equipment class'' and ''equipment class groups.'' An equipment class represents a unique combination of motor characteristics for which DOE is establishing a specific energy conservation standard. This includes permutations of electric motor design types (*i.e.,* NEMA Design A & B (and IEC equivalents)), standard horsepower ratings (*i.e.,* standard ratings from 1 to 500 horsepower), pole configurations (*i.e.,* 2–, 4–, 6–, or 8–pole), and enclosure types (*i.e.,* open or enclosed). An equipment class group (''ECG'') is a collection of electric motors that share a common design trait. Equipment class groups include motors over a range of horsepower ratings, enclosure types, and pole configurations. Essentially, each equipment class group is a collection of a large number of equipment classes with the same design trait. As such, in the March 2022 Preliminary Analysis, DOE presented equipment class groups based on electric motor design, motor topology, horsepower rating, pole configuration and enclosure type. See Chapters 2.3.1 and 3.2.2 of the March 2022 Preliminary Analysis TSD.

Further, although DOE acknowledged that synchronous electric motors, inverter-only electric motors and induction electric motors >500 hp and ≤750 hp would be within scope, DOE did not create separate equipment classes for these electric motors and did not evaluate separate energy conservation standards. (See Chapter 2.3.1.3 of the March 2022 Preliminary Analysis TSD) However, DOE did evaluate synchronous and inverter-only electric motors jointly with the induction motors because the motors did not have a performance-related feature that would justify a separate class. *Id.*

In response to the equipment classes, DOE received a number of comments, which are presented below. Comments regarding SNEM and AO–SNEM equipment classes will be addressed in a separate NOPR.

Regarding air-over motors, NEMA agreed that an air-over rating warrants a separate equipment class because these motors are often built in a smaller frame size to take advantage of the outside airflow. NEMA stated that these motors built in a smaller frame size are limited in their efficiency capability because less active material can fit in them. (NEMA, No. 22 at p. 7)

Since the comments to the March 2022 Preliminary Analysis TSD, the November 2022 Joint Recommendation specifically recommended that DOE establish two separate equipment classes for AO–MEMs, *i.e.,* standard frame AO–MEMs and specialized frame AO–MEMs, because of their different applications. The November 2022 Joint Recommendation identified standard frame AO–MEMs as AO–MEMs sold in standard NEMA frame sizes aligned with NEMA MG1, Table 13.2 and Table 13.3. In addition, the November 2022 Joint Recommendation identified specialized, smaller frame AO–MEMs as a group of motors for which the rated output exceeds the horsepower-frame size limits in the aforementioned NEMA MG1 tables. The Electric Motors Working Group noted that these motors are used in specialty applications where the design is optimized to meet space constraints and take advantage of higher-than-normal airflows, such as in agriculture applications. They also stated that because of the higher airflows, the motor operates at greater power densities than standard-frame motors, which therefore results in the motor being loaded to a slightly less efficient operating point. Accordingly, they recommended these motors be separated into their own equipment class. See November 2022 Joint Recommendation at 4–5.

Consistent with the November 2022 Joint Recommendation, in this direct final rule, DOE is separating the air-over equipment class into two equipment classes. As such, DOE is including ''AO–MEM (Standard frame size),'' and renaming ''Specialized Frame Size AO–MEMs'' (from the November 2022 Joint Recommendation) to ''AO–Polyphase (Specialized frame size)''. DOE notes that the frame size constraints from Recommendation 3.b. include frame sizes beyond those specifically in the AO–MEM scope; as discussed in section III.A, 10 CFR 431.25(g)(7) specifically states that a MEM built in a two-digit frame size would only be an enclosed 56 NEMA frame size (or IEC metric equivalent), whereas Recommendation 3.b. specifies maximum NEMA frame diameters at 48 NEMA frame size. Accordingly, to provide a more representative naming convention for these motors, DOE is using ''AO–Polyphase (Specialized frame size)'' in this direct final rule. DOE notes that only the naming convention is changed compared to the November 2022 Joint Recommendation; the scope of motors being represented continues to stay the same.

In addition, to clarify what is meant by ''standard frame size'' and ''specialized frame size,'' DOE is adding definitions in the CFR consistent with the recommendations from the November 2022 Joint Recommendation. Specifically, in this direct final rule, DOE is adding a definition for ''standard frame size'' as ''aligned with the specifications in NEMA MG 1–2016 section 13.2 for open motors, and NEMA MG 1–2016 section 13.3 for enclosed motors.'' Further, DOE is adding a definition for ''specialized frame size'' as ''means an electric motor frame size for which the rated output power of the motor exceeds the motor frame size limits specified for standard frame size. Specialized frame sizes have maximum diameters corresponding to the following NEMA Frame Sizes:''

Motor horsepower/standard kilowatt equivalent	Maximum NEMA frame diameter							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	48	.....	48	48	48	48	140	140
1.5/1.1	48	48	48	48	140	140	140	140
2/1.5	48	48	48	48	140	140	180	180
3/2.2	140	48	140	140	180	180	180	180
5/3.7	140	140	140	140	180	180	210	210
7.5/5.5	180	140	180	180	210	210	210	210
10/7.5	180	180	180	180	210	210	.....	.....
15/11	210	180	210	210	.....	.....	.....	.....
20/15	210	210	210	210	.....	.....	.....	.....

Regarding motors already covered at 10 CFR 431.25(g), NEMA stated that locked-rotor torque is not a typical design criterion used by end-users and that this value is already captured in the NEMA Design A, B, C etc. classification. NEMA also stated that locked-rotor torque is not a reliable means for determining energy efficiency. (NEMA, No. 22 at p. 6) DOE agrees with the statement and is therefore not incorporating locked-rotor torque as an equipment class identifier for MEMs currently covered at 10 CFR 431.25(g).

Regarding synchronous and inverter-only electric motors, NEEA recommended that DOE not create separate equipment classes because these motors are used in the same applications as their induction motor counterparts. (NEEA, No. 33 at p. 3) The Joint Advocates stated that while they agree that inverter-only induction electric motors do not have a unique performance-related feature or utility that justifies a separate class from non-inverter and inverter-capable motors, they were concerned that inverter-only motors may be at an unfair disadvantage relative to single-speed induction motors when efficiencies are evaluated only at full load. (Joint Advocates, No. 28 at p. 3) As discussed in section IV.A.1.d of this document, DOE is not separately regulating inverter-only and synchronous electric motors in this direct final rule. Rather, DOE is only considering the substitution effects of switching to these electric motors if higher standards for MEMs are established. Otherwise, comments regarding the test procedure and metric are addressed in section IV.A.2 of this document.

Therefore, Table IV–1 presents the ECGs considered in this direct final rule. The equipment class groups represent a total of 425 equipment classes.

TABLE IV–1—EQUIPMENT CLASS GROUPS CONSIDERED

ECG	ECG motor design type	Motor topology	Horsepower rating	Pole configuration	Enclosure
1	MEM 1–500 hp, NEMA Design A & B	Polyphase	1–500	2, 4, 6, 8	Open. Enclosed.
2	MEM 501–750 hp, NEMA Design A & B	Polyphase	501–750	2, 4	Open. Enclosed.
3	AO–MEM (Standard Frame Size)	Polyphase	1–250	2, 4, 6, 8	Open. Enclosed.
4	AO–Polyphase (Specialized Frame Size)	Polyphase	1–20	2, 4, 6, 8	Open. Enclosed.

4. Technology Options

In the March 2022 Preliminary Analysis market and technology assessment, DOE identified several technology options that were initially determined to improve the efficiency of electric motors, as measured by the DOE test procedure. Table IV–2 presents the technology options considered in the March 2022 Preliminary Analysis.

TABLE IV–2—MARCH 2022 PRELIMINARY ANALYSIS TECHNOLOGY OPTIONS TO INCREASE MOTOR EFFICIENCY

Type of loss to reduce	Technology option
Stator I2R Losses	Increase cross-sectional area of copper in stator slots Decrease the length of coil extensions
Rotor I2R Losses	Increase cross-sectional area of end rings. Increase cross-sectional area of rotor conductor bars. Use a die-cast copper rotor cage.
Core Losses	Use electrical steel laminations with lower losses. (watts/lb) Use thinner steel laminations. Increase stack length (*i.e.,* add electrical steel laminations).
Friction and Windage Losses	Optimize bearing and lubrication selection. Improve cooling system design.
Stray-Load Losses	Reduce skew on rotor cage. Improve rotor bar insulation.

In response to the technology options, DOE received several comments.

Regarding electrical steel, NEMA stated that newer grade steels are available but not in the high volumes required to replace today's production, and that many new grades are imported and subject to tariffs and delays. (NEMA, No. 22 at p. 10) NEMA argued that using lower-loss steel would not necessarily result in a more efficient electric motor. (NEMA, No. 22 at p. 10–13) Specifically, NEMA stated that processing of the steel during motor manufacturing could alter electrical steel performance. As an example, NEMA noted that thinner steels would deform more when punched than thicker grades. (NEMA, No. 22 at p. 11) Additionally, NEMA stated that different steel grades could have different heat transfer rates, which may affect motor operating temperature and, thus, efficiency. (NEMA, No. 22 at p. 11) NEMA provided certain test data illustrating its claims regarding the potential for steel loss and motor efficiency to diverge. (NEMA, No. 22 at p. 12) Relatedly, NEMA provided finite element model data illustrating magnetic flux density over the cross section of a 4-pole induction motor and noting the nonuniformity of the flux density values obtained, which NEMA observed could exceed the 1.5T-reference value commonly used by steel producers to rate their products. (NEMA, No. 22 at p. 13–14)

Losses generated in the electrical steel in the core of an induction motor can be significant and are classified as either hysteresis or eddy current losses. Hysteresis losses are caused by magnetic domains resisting reorientation to the alternating magnetic field. Eddy currents are physical currents that are induced in the steel laminations by the magnetic flux produced by the current in the windings. Both hysteresis and eddy current losses generate heat in the electrical steel.

In evaluating techniques used to reduce steel losses, DOE considered two types of material: conventional non-oriented electrical steel and ''non-conventional'' steels, which may contain high proportions of boron or cobalt or lack metal grain structure altogether. Conventional steels are more commonly used in electric motors manufactured today. The three types of steel that DOE classifies as ''conventional,'' include cold-rolled magnetic laminations, fully processed non-oriented electrical steel, and semi-processed non-oriented electrical steel. DOE does not model non-conventional electrical steels in its analysis of electric motors, including cobalt-based and amorphous steels. For additional details on DOE's software modeling and analysis of electrical steel performance, see chapter 3 of the direct final rule TSD.

DOE acknowledges the potential for increased non-oriented steel demand arising from a larger trend toward electrification of vehicles and equipment. However, DOE's research of publicly announced non-oriented electrical steel manufacturing capacity expansions [30] either currently underway

[30] *E.g.,* (1) US-based Cleveland-Cliffs doubles NOES capacity by 2023, adding 70 kilotons of annual capacity in response to customer demand.

(2) US-based Big River Steel (a subsidiary of United States Steel Corporation) announced plans to increase annual NOES production capacity by 200 kilotons by September 2023.

(3) JFE Steel reports plans to double NOES production capacity by the first half of the 2024 fiscal year, which begins in April 2024.

(4) Baoshan Iron & Steel (''Baosteel'', a subsidiary of China Baowu Steel Group) is reported to be expanding NOES production capacity by 500 kilotons by March 2023.

Continued

or planned for the near future suggests that steelmakers, both US-based and international, are anticipating increased demand and demonstrating willingness to increase supply accordingly.

Regarding tariffs on imported steels, DOE presented the costs for various steel grades to manufacturers during interviews and updated the costs based on input received. The input DOE received about steel prices incorporated changes in costs due to importing delays, tariffs, and global supply. Because the steel tariff applies to articles imported into the United States, it does not directly affect prices paid for steel in other nations, including those which manufacture motors sold in the US market.

Regarding the uncertain ability of lower-loss electrical steel to increase motor efficiency, electric motor manufacturers stated during confidential interviews that lower-loss steel would generally increase motor efficiency, even when considering the potential increase in steel loss that can arise during manufacturing. Accordingly, DOE considers lower-loss electrical steel to be an available option for improving motor efficiency in general, even if not in all possible motor designs. Electric motor manufacturers during confidential interviews did not report having constructed or tested electric motor designs using what appear to be the lowest-loss electrical steel grades available in the market. In cases, manufacturers reported unfamiliarity with the grades. As a result, DOE is not able to assess whether testing performed by manufacturers, including the example presented by NEMA (NEMA, No. 22 at p. 12), establishes a limitation on the degree of electric motor efficiency improvement possible through use of increasingly lower-loss electric steel.

Regarding the flux density map from finite element modeling provided by NEMA, it is reasonable to expect variation in flux density levels throughout both the motor laminations and over time, as NEMA observes. DOE's analysis does not assume a constant flux density would exist throughout an electric motor. Those variations would cause instantaneous, localized steel loss levels to vary accordingly, and depart from the manufacturer-rated values at a given, single reference value (1.5T, commonly for non-oriented electric steels). All grades of non-oriented electrical steel that DOE has identified share the property of increasing loss with increasing flux density. Thus, the flux density variation cited by NEMA would ostensibly exist for electrical steels generally; it would not be unique to lower-loss steel grades. Additionally, when evaluating use of a higher steel grade, manufacturers would likely optimize the design for the grade in question for any design likely to be built in significant volume. For DOE's modeling, DOE considered a conservative approach to represent performance of these lower-loss electrical steels, which is discussed further in section IV.C.1.c of this document.

Some production requirements associated with using lower-loss steel grades are understood and able to be accounted for with a cost. For example, increasing the silicon content of an alloy may increase resistivity (and thus, potentially reduce loss) but increase the hardness of the grade as a side effect. The comparatively harder steel may wear punching dies more rapidly, which would be likely to worsen the quality of the punched steel laminations more quickly if tooling were not replaced correspondingly more often or substituted with a harder tooling material. More frequent tooling replacement and harder tooling would be likely to add cost to the electric motor manufacturing process, which DOE accounts for in the manufacturer impact analysis.

Separately, NEMA also commented on another technology option that DOE considered. Specifically, NEMA stated that the benefits of reducing the length of the coil extensions are not clear. It noted that to reduce the I^2R loss, the mean length of each turn in the end coil region would have to be reduced during the coil winding stage but doing so would increase the difficulty of winding insertion due to increased crowding with adjacent coils. However, NEMA stated that if such a reduction in mean length was feasible, it is likely to have already been exploited to their full extent because it would reduce the amount of copper in the winding, and would also be a cost-saving measure. (NEMA, No. 22 at p. 3) DOE agrees that decreasing the length of the coil extensions in the stator slots of an electric motor reduces the resistive I^2R losses, and reduces the material cost of the electric motor because less copper is being used. DOE also agrees that there may be limited efficiency gains, if any, for most electric motors using this technology option. DOE understands that electric motors have been produced for many decades and that many manufacturers have improved their production techniques to the point where certain design parameters may already be fully optimized. However, DOE cannot conclude that this design parameter is fully optimized for all electric motors, and therefore maintains that this is a design parameter that affects efficiency and should be considered when designing an electric motor because it is a technology option that continues to be technologically feasible. DOE has previously made similar conclusions in the May 2014 Final Rule. *See* 79 FR 30934, 30960.

The CA IOUs strongly suggested that DOE update the maximum technology feasible for electric motors to include, at a minimum, the commercially available technology with the highest efficiency. The CA IOUs provided data for commercially available electric motors, as well as built and tested prototypes, that exceed the max-tech performance assumption in the March 2022 Preliminary Analysis. (CA IOUs, No. 30 at p. 3) For the analysis, DOE uses the maximum efficiency technology option to represent the design option which yields the highest energy efficiency that is technologically feasible within the scope of MEMs and air-over electric motors, which are all induction motors. In their comment, the CA IOU's present high efficiency motors that are all outside the scope of this direct final rule, such as permanent magnet synchronous motors, and electronically commutated motors. As such, DOE is not amending the maximum technology design option in this direct final rule.

Therefore, DOE maintains the same technology options from the March 2022 Preliminary Analysis in this direct final rule.

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:

(8) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(9) *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.

(5) POSCO announced groundbreaking for a NOES production facility which will approximately quadruple high-efficiency NOES capacity to 400 kilotons by 2025.

(10) *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.

(11) *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.

(12) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

As part of the May 2022 Preliminary Analysis, DOE requested feedback, in part, on its screening analysis based on the five criteria described in this section. 87 FR 11650. The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

In the March 2022 Prelim TSD, DOE screened out amorphous metal laminations and plastic bonded iron powder (''PBIP'') from the analysis. DOE requested further data on the feasibility of amorphous steel being used in electric motors at scale. See chapter 3 of the March 2022 Prelim TSD. In response, DOE received comments regarding the technologies excluded from this engineering analysis.

Metglas commented that they strongly disagree with the decision to exclude electric motors that use amorphous steel. Metglas stated that Hitachi Industrial Equipment Systems Co., Ltd. (Hitachi Sanki Systems) has commercially produced higher efficiency air compressors (IE5 class) with an amorphous metal-based motor since 2017. Metglas noted that Hitachi Ltd. is using novel motor topologies to optimize the use of amorphous foil in the fabrication process. Metglas claimed that other motor producers are actively designing amorphous metal-based motors, and while amorphous metal-based motors are certainly not predominant today, they do represent where the maximum technological feasibility efficiency levels can be set for electric motors. Metglas claimed the losses when using an amorphous metal stator have been shown to drop by more than 75 percent compared to a conventional non-oriented electrical steel, and that this allows for higher operational frequencies which reduces the overall motor size for the same output power. Furthermore, Metglas claimed higher efficiencies in other electrical appliances can be achieved with more efficient amorphous-based motors. (Metglas, No. 24 at p. 1) Metglas requested that DOE consider the maximum technical feasibility efficiency be based on the performance of amorphous metal containing motors, but understands that the DOE cannot set efficiency levels based on niche materials that have not been widely demonstrated on a commercial scale. (Metglas, No. 24 at p. 2) On the other hand, NEMA commented that amorphous steel is not a direct replacement for the current electrical steel that is in motors, and stated that this option is unproven since NEMA is not aware of any successful prototype motors using this steel. (NEMA, No. 22 at p. 14)

DOE reviewed the information submitted by Metglas and notes that the motors provided appear to all require an inverter to drive and are thus not in the scope of this direct final rule. DOE understands the potential benefits of using amorphous steel, particularly the reduction in core losses during operation, but was unable to identify any electric motors within the scope of this rule using amorphous steel. Additionally, as stated in the March 2022 Preliminary TSD, amorphous steel is a very brittle material which makes it difficult to punch into motor laminations. Amorphous steel may also be less structurally stiff, requiring additional mechanical support to implement. Finally, amorphous steel may entail greater acoustic noise levels, which may be unsuitable for some applications or require design compromises to mitigate. As such, with it not being definitive that amorphous steel is able to meet all the screening criteria, DOE is continuing to screen out amorphous metal in this direct final rule on the basis of technological feasibility.

Accordingly, consistent with the March 2022 Preliminary Analysis, DOE is continuing to screen out amorphous metal laminations and PBIP in this direct final rule.

2. Remaining Technologies

In the March 2022 Prelim TSD, DOE did not screen out the following technology options: Increasing cross-sectional area of copper in stator slots; decreasing the length of coil extensions; increasing cross-sectional area of end rings; increasing cross-sectional area of rotor conductor bars; using a die-cast copper rotor cage; using electrical steel laminations with lower losses (watts/lb); using thinner steel laminations; increasing stack length; optimizing bearing and lubrication selection; improving cooling system design; reducing skew on rotor cage; and improving rotor bar insulation. See chapter 3 of the March 2022 Prelim TSD.

Regarding copper die-cast rotors, NEMA commented in opposition of DOE's decision to not screen out copper die-cast rotors. NEMA stated that only one manufacturer offers NEMA Design A, B, or C motors with copper rotor cages, and that the largest horsepower offered of these motors was 20 HP. NEMA also stated that they are not practicable to manufacture because of added equipment requirements, higher energy costs to melt the copper, die lifespan that is 10 percent that of dies used for aluminum, and a casting piston life of only 500 rotors. NEMA also stated that the increased locked-rotor current due to the copper rotor would push certain motors out of NEMA Design B requirements and reduce consumer utility. NEMA finally stated that the higher melting point of copper (1084 deg C) vs. aluminum (660 deg C) poses health and safety issues for plant workers, and that DOE failed to rebut this claim with evidence in 2012. (NEMA, No. 22 at p. 4–5)

Aluminum is the most common material used today to create die-cast rotor bars for electric motors. Some manufacturers that focus on producing high-efficiency designs have started to offer electric motors with die-cast rotor bars made of copper. Copper offers better performance than aluminum because it has better electrical conductivity (*i.e.,* a lower electrical resistance). However, because copper also has a higher melting point than aluminum, the casting process becomes more difficult and is likely to increase both production time and cost.

DOE recognizes that assessing the technological feasibility of copper die-cast rotors in high-horsepower motors (above 30 HP) is made more complex by the fact that manufacturers do not offer them commercially. That could be for a variety of reasons, among them: (1) large copper die-cast rotors are physically impossible to construct; (2) they are possible to construct, but impossible to construct to required specifications, or (3) they are possible to construct to required specifications, but would require large capital investment to do so and would be so costly that few (if any) consumers would choose them. As stated in the March 2022 Preliminary TSD, electric motors incorporating copper die-cast rotor cages are already commercially available by large manufacturers for motors up to 30 horsepower.[31] As such, DOE does not have enough evidence to screen out copper die-cast rotors on the basis of practicability to manufacture, install, and service, or adverse impacts to equipment utility or availability. Additionally, DOE is hesitant to screen out copper die-cast rotors on the basis of technological feasibility because there is nothing to suggest the advantages associated with copper rotors would not occur beyond a certain size. Therefore, DOE's research into commercially available electric motors with copper die-cast rotors does not conclude that copper die-cast rotors are either: (1) physically impossible to construct, or (2) possible to construct, but impossible to construct to required specifications.

DOE considers a higher factory overhead markup (which includes all the indirect costs associated with production, indirect materials and energy use, taxes, and insurance) for copper die-cast rotors in the engineering analysis. See Chapter 5 of the direct final rule TSD. In addition, DOE understands that large capital investments may be needed for copper die-cast rotors, which is addressed as additional conversion costs in the manufacturer impact analysis (see section IV.J.4).

Regarding the higher melting point of copper versus aluminum (1085 degrees Celsius versus 660 degrees Celsius), although the increased temperature could theoretically affect the health or safety of plant workers, DOE does not believe that this potential impact is sufficiently adverse to screen out copper as a die cast material for rotor conductors. The process for die casting copper rotors involves risks similar to those of die casting aluminum. DOE believes that manufacturers who die-cast metal at 660 Celsius or 1085 Celsius (the respective temperatures required for aluminum and copper) would need to maintain strict safety protocols in both cases. DOE understands that many plants already work with molten aluminum die casting processes and believes that similar processes could be adopted for copper. Since DOE has not received any supporting data about the increased risks associated with copper die-casting versus aluminum die-casting, DOE is not screening out copper die-cast rotors from this direct final rule.

Otherwise, through a review of each technology, DOE concludes that all of the other identified technologies listed in section IV.A.4 met all five screening criteria to be examined further as design options in DOE's direct final rule analysis. The design options screened-in are consistent with the design options from the March 2022 Preliminary Analysis. DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the direct final rule TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of electric motors. 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 equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class, DOE estimates the baseline cost, as well as the incremental cost for the equipment at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing 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 interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In this rulemaking, DOE applied a combination of the efficiency-level approach and the design-option approach to establish efficiency levels to analyze. The design-option approach was used to characterize efficiency levels that are not available on the market but appear to be market solutions for those higher efficiency levels if sufficient demand existed. For the efficiency levels available on the market, sufficient performance data was publicly available to characterize these levels.

a. Representative Units Analyzed

Due to the large number of equipment classes, DOE did not directly analyze all equipment classes of electric motors considered in this direct final rule. Instead, DOE selected representative units based on two factors: (1) the quantity of motor models available within an equipment class and (2) the

[31] DOE is aware of two large manufacturers—Siemens and SEW-Eurodrive—that offer die-cast copper rotor motors up to 30-horsepower.

ability to scale to other equipment classes.

Table IV–3 presents the representative units DOE analyzed in the March 2022 Preliminary Analysis. DOE only analyzed NEMA Design B representative units.

TABLE IV–3—MARCH 2022 PRELIMINARY ANALYSIS REPRESENTATIVE UNITS ANALYZED

ECG/Design type	Representative unit horsepower (4 poles, enclosed)	Represented horsepower range (all poles, all enclosures)
MEM, NEMA Design B	5	1 ≤ hp ≤5.
	30	5 < hp ≤ 50.
	75	51 < hp ≤ 100.
	*150	101 < hp ≤ 200.
	*250	201 < hp ≤ 500.
AO–MEM, NEMA Design B	5	1 < hp ≤ 20.
	30	21 < hp ≤ 50.
	75	51 < hp ≤ 500.

* While these representative units were not directly analyzed in the engineering analysis, they were added to represent consumers of larger sized electric motors for the LCC and NIA analyses.

DOE received a comment regarding motor testing at higher efficiency levels. NEMA stated that DOE should test a greater number of representative units across all design types to better inform scaling assumptions, and that for higher efficiency levels, testing is more important than scaling. In addition, NEMA commented that DOE places too much reliance on untested models, scaling and interpolation. NEMA commented that the only appropriate way to evaluate non-represented equipment classes is to study them through testing (including prototype construction for testing, as appropriate). (NEMA, No. 22 at p. 15, 24)

DOE recognizes that scaling motor efficiencies is a complicated proposition that has the potential to result in efficiency standards that are not evenly stringent across all equipment classes. However, given the extremely high volume of horsepower rating, pole configuration, and enclosure combinations, DOE cannot feasibly analyze all of these variants directly, hence, the need for scaling.

For the analysis, DOE obtained electric motor performance data from a catalog reflecting electric motors currently available in the U.S. market and views this database as representative of the full range of motors that can be purchased. Specifically, DOE created a database which contains information regarding the characteristics of the motor (motor performance values like horsepower output, pole configuration, NEMA Design letter, etc.), and the full-load efficiency (''2022 Motor Database''). DOE collected performance data from online catalogs for four major motor manufacturers in 2022: ABB (which includes the manufacturer formerly known as Baldor Electric Company), Nidec Motor Corporation (which includes the US Motors brand), Regal-Beloit Corporation (which includes the Marathon and Leeson brands), and WEG Electric Motors Corporation.[32] Based on market information from the Low-Voltage Motors World Market Report,[33] DOE estimates that the four major motor manufacturers noted above comprise the majority of the U.S. motors market and are consistent with the motor brands considered in this direct final rule. In addition, DOE tested multiple motors and obtained test reports detailing the efficiency of these motors at their rated load, along with many other measurements and technical specifications, to inform the scaling relationships and efficiency analysis described in this direct final rule.

Using the 2022 Motor Database, and along with testing and modeling, DOE affirms that the scaling methodologies employed are accurate for the purposes of determining energy conservation standards, and therefore maintains the current scaling methodology. Further, the relationships used to scale between efficiency and a combination of horsepower, pole count, and enclosure are consistent with previously used and validated methods of scaling, which are based on Table 12–12 of NEMA MG 1–2016. For more detailed discussion on scaling, see section IV.C.4. Consequently, DOE has concluded that scaling is necessary and suitable for establishing appropriate efficiency levels for new or amended energy conservation standards for electric motors.

For this direct final rule, DOE updated several representative units based on the November 2022 Joint Recommendation. Overall, DOE updated the representative units to be based on both NEMA Design A and B instead of only NEMA Design B. The November 2022 Joint Recommendation specifically noted that to achieve IE4 levels, manufacturers would likely shift from NEMA Design B to NEMA Design A motors.

DOE notes that the one main difference between NEMA Design A and Design B is that Design A does not have a locked-rotor current limit. Locked-rotor current is the steady-state current applied to a motor, at its rated voltage, when the rotor is stationary. It is a critical design characteristic of induction motors because higher locked-rotor currents can negatively impact (or even damage) the starting circuit if the starting circuit is not equipped to handle the locked-rotor current. One of the ways to improve motor efficiency is to use lower core-loss electrical steel, but a common tradeoff of these low core-loss steels is a lower permeability [34] that requires the motor to have a higher locked-rotor current to meet the torque requirements of NEMA Design A and B. DOE analyzed a sample of over 3,000 NEMA Design A and B motors currently available on the market and found that

[32] ABB (Baldor-Reliance): Online Manufacturer Catalog, accessed March 22, 2022. Available at *https://www.baldor.com/catalog#category=2;* Nidec: Online Manufacturer Catalog, accessed April 8, 2022. Available at *ecatalog.motorboss.com/Catalog/Motors/ALL;* Regal (Marathon and Leeson): Online Manufacturer Catalog, accessed May 25, 2022. Available at *https://www.regalbeloit.com/Products/Faceted-Search?category=Motors&brand=Leeson,Marathon%20Motors;* WEG: Online Manufacturer Catalog, accessed March 22, 2022. Available at *http://catalog.wegelectric.com/.*

[33] Based on the OMDIA, Low-Voltage Motors Intelligence Service, Annual 2020 Analysis(OMDIA Report November 2020) Table 3: Market Share Estimates for Low-voltage Motors: Americas; Suppliers 'share of the Market:2019.

[34] The magnetic permeability of a material determines the magnitude of magnetic flux density in the material after a magnetic field is applied to it, and the magnetic flux density is proportional to the amount of torque generated in an electric motor.

over 50 percent of them are already at or above 90 percent of the NEMA Design B locked-rotor current limit. DOE notes that higher energy conservation standards could incentivize manufacturers to offer NEMA Design A motors in place of their Design B motors.

While it appears to be possible to design NEMA Design B motors that are at higher efficiency levels than current standards, these NEMA Design B motors would require some combination of longer stack lengths, wider core laminations, and/or higher slot fills, all of which could require additional equipment and retooling by the manufacturer. Because NEMA Design A and B motors are in the same equipment class, in the case of higher standards, manufacturers could opt to shift their offerings to NEMA Design A motors that do not require nearly the same magnitude of investment by the manufacturer. This shift to NEMA Design A offerings could result in additional installation costs, discussed in section IV.F.2. DOE's review of current motor catalogs suggests multiple manufacturers representing their IE4 motors as NEMA Design A.[35] As such, in this direct final rule, the representative unit designs include both NEMA Design A and Design B.

In addition, DOE updated the horsepowers analyzed, and the range of horsepowers each representative unit represents. First, DOE updated the MEM Design A/B 250 hp representative unit to 350 hp to better represent the horsepower range between 250 hp to 500 hp, which the Electric Motors Working Group recommended to remain at Premium Level/IE3 level (see Recommendation #1 in section II.B.3). Second, DOE added a MEM Design A/B representative unit at 600 hp to represent and analyze electric motors rated over 500 hp and up to 750 hp (see Recommendation #2 in section II.B.3). Third, DOE split the air-over equipment class into AO–MEM (Standard Frame Size) and AO–Polyphase (Specialized Frame Size), as discussed in section IV.A.3, and added the following representative units: (1) a representative unit to represent the horsepower range between 100 hp to 250 hp for AO–MEM (Standard Frame Size), which the Electric Motors Working Group recommended at Super Premium/IE4 level; and (2) a representative unit to represent the horsepower range between 1 hp to 20 hp for AO–Polyphase (Specialized Frame Size), which the Electric Motors Working Group recommended at fire pump level (see Recommendation #3 in section II.B.3). DOE notes that the 250 hp limit for AO–MEM (Standard Frame Size) corresponds to the horsepower output range observed in the 2022 Motor Database.

Otherwise, similar to the March 2022 Preliminary Analysis, DOE chose the horsepower ratings that constitute a high volume of motor models and approximate the middle of the range of covered horsepower ratings so that DOE could develop a reasonable scaling methodology. DOE did not vary the pole configuration of the representative classes it analyzed because analyzing the same pole configuration provided the strongest relationship upon which to base its scaling. Keeping as many design characteristics constant as possible enabled DOE to more accurately identify how design changes affect efficiency across horsepower ratings. For each motor topology, DOE directly analyzed the most common pole-configuration, which was 4-pole.

Table IV–4 presents the representative units analyzed, and the covered horsepower ranges for each of the representative units.

TABLE IV–4—REPRESENTATIVE UNITS ANALYZED

ECG	Representative unit (RU)	Representative unit horsepower (4 poles, enclosed)	Represented horsepower range (all poles, all enclosures)
MEM 1–500 hp, NEMA Design A & B	1	5	$1 \leq hp \leq 5$.
	2	30	$5 < hp \leq 20$.
			$20 < hp \leq 50$.
	3	75	$50 < hp < 100$.
	4	150	$100 \leq hp \leq 250$.
	5	350	$250 < hp \leq 500$.
MEM 501–750 hp, NEMA Design A & B	6	600	$500 < hp \leq 750$.
AO–MEM (Standard Frame Size)	7	5	$1 \leq hp \leq 20$.
	8	30	$20 < hp \leq 50$.
	9	75	$50 < hp < 100$.
	10	150	$100 \leq hp \leq 250$.
AO–Polyphase (Specialized Frame Size)	11	5	$1 \leq hp \leq 20$.

b. Baseline Efficiency

For each equipment class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each equipment class represents the characteristics of an equipment typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

In the March 2022 Preliminary Analysis, for current scope motors in 10 CFR 431.25, DOE used the current energy conservation standards in Table 5 of 10 CFR 431.25 as the baseline. For AO–MEMs, DOE used a baseline representing the lowest efficiencies available in the market based on catalog listings. See Chapter 5 of the March 2022 Prelim TSD. In response to the March 2022 Preliminary Analysis, DOE received comments on how the baseline efficiencies were established.

The Joint Advocates encouraged DOE to both clarify and refine the baseline efficiency levels for air-over electric motors. (Joint Advocates, No. 27 at pp. 2–3) Specifically, they commented that while the March 2022 Preliminary Analysis stated that the baseline

[35] ABB Product Brochure: NEMA Super-E Premium efficient motors. (Last accessed December 2, 2022.) *https://library.e.abb.com/public/e35d57ce4df3160285257d6d00720f51/9AKK106369_SuperE_1014_WEB.pdf.* WEG Super Premium Efficiency Catalog: *https://www.weg.net/catalog/weg/US/en/c/MT_1PHASE_LV_TEFC_W22_STANDARD/list?h=3a6a6e81.*

efficiency levels of the currently covered motors were the same as the air-over versions (See: EERE–2020–BT–STD–0007–0010, p. 5–7), Table 5.3.6 of the March 2022 Prelim TSD showed the baseline efficiency levels for the currently covered motors as EL1 for the air-over variants. Further, the Joint Advocates commented that the assumption that baseline air-over motors are less efficient than the baseline in the current standard for covered motors is supported by the 2015 Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') term sheet for fans and blowers,[36] which included default air-over motor efficiencies less than those shown in the March 2022 Preliminary Analysis. The Joint Advocates commented that they suspected that the lack of coverage for air-over motors means that there are available models that may be considerably less efficient than equivalent non-air-over motors. In addition, the Joint Advocates commented that the appropriate baseline efficiency levels for AO motors will depend heavily on the final AO motor test procedure. (Joint Advocates, No. 27 at pp. 2–3)

DOE notes that the Joint Advocates' statement that the baseline efficiency levels of currently covered motors are the same as the air-over versions in the March 2022 Prelim TSD is incorrect. The March 2022 Prelim TSD stated that, since AO motors are designed largely the same as non-AO motors, DOE used the same higher efficiency levels for AO MEM motors, and did not state that baseline efficiency levels of currently covered motors are the same as the air-over versions. This is shown in Table 5.3.6 and Table ES3.3.3 of the March 2022 Preliminary TSD, which also present the baseline efficiency for air-over motors as lower than the baseline for currently regulated motors.

Otherwise, DOE acknowledges that because air-over electric motors are not currently regulated, air-over electric motors will likely be less efficient than currently regulated non-air-over electric motors available on the market. In order to understand the efficiency of air-over electric motors currently available, DOE reviewed the 2022 Motor Database. With that, DOE confirmed that air-over electric motors were less efficient than currently regulated non-air-over electric motors and also noted that AO–MEMs were only available up to 250 hp. However, DOE did not identify baselines as low as what was considered in the 2015 ASRAC term sheet for fans and blowers; because DOE had current market data through the 2022 Motor Database, DOE decided to consider more up-to-date baseline efficiencies. As such, DOE maintained the engineering analysis for AO–MEMs from the March 2022 Preliminary Analysis.

The Joint Advocates commented that DOE's specification of a single target test temperature of 75 °C for all AO motors may not be representative. For example, the Joint Advocates commented that it is plausible that one or more of the AO motors that DOE tested may run at higher temperatures in the field, which would result in lower real-world efficiency. As such, they noted that artificially cooling a hotter running motor beyond realistic operating temperatures could result in AO motor efficiency ratings that are not representative both in comparison to other AO motors and the equivalent non-AO motors. Therefore, the Joint Advocates recommend that DOE analyze appropriate baseline efficiency levels for AO motors. (Joint Advocates, No. 27 at p. 3) In the October 2022 Final Rule, DOE addressed the single-target temperature concerns by specifying that the requirement to use a single target temperature of 75 °C only applies to air-over motors that do not have a specified temperature rise. As such, if the temperature rise is specified on the motor, such temperature rise will be used to determine the target temperature. 87 FR 63588, 63614.

Accordingly, in this direct final rule, DOE included the following baseline efficiencies, which are summarized below in Table IV–5:

For ECG 1, DOE used the current energy conservations standards in Table 5 of 10 CFR 431.25 to establish the baseline efficiency for each representative unit analyzed. The standards for this ECG align with Table 12–12 of NEMA MG 1–2016 ''Full-Load Efficiencies for 60 Hz Premium Efficiency . . .'' and is commonly referred to by industry as ''NEMA Premium'' or IE3 levels.

For ECGs 2 and 3, DOE used available catalog data to understand the efficiencies of motors offered. DOE observed that the lowest efficiencies at multiple horsepowers aligned with the efficiencies found in Table 12–11 of NEMA MG 1–2016 ''Full-Load Efficiencies of 60 Hz Energy-Efficient Motors''. These levels of efficiency are commonly referred to as ''fire pump electric motor levels'' since they largely correspond to the energy conservations standards for fire pump motors set out in Table 7 of 10 CFR 431.25. As such, DOE set the baseline for ECGs 2 and 3 in line with fire pump electric motor levels.

For ECG 4, during the electric motor working group negotiations it was discussed that catalog data would not accurately represent the efficiencies of these ''specialized'' frame size motors since they are designed be placed in larger equipment based on manufacturer specifications, and not typically sold through publicly available catalogs. DOE understands that given a fixed horsepower output, reducing frame size will restrict the potential for efficiency improvements in a motor and may make improvements in efficiency more expensive compared to a larger motor. Because the electric motors in ECG 4 are smaller versions of those in ECG 3, DOE assumed that the baseline efficiency for ECG 4 would be an offset version of the baseline of ECG 3. DOE decided to quantify the offset in terms of 'NEMA bands' because these bands are commonly used by industry when describing motor efficiency. One NEMA band represents a 10 percent reduction in motor losses from the previous efficiency value; Table 12–10 of NEMA MG 1–2016 specifies the list of selectable efficiency values. DOE received feedback from manufacturers that they typically design motors in increments of 20 percent loss differences or more because of motor efficiency test variability and marketing clarity. This 20 percent loss is consistent with the IE level designations, in that each IE level that is included in IEC 60034–30–1:2014, starting from IE1 (lowest efficiency) to IE4 (highest efficiency), is approximately in increments of 20 percent loss difference. As such, DOE assumed the baseline for ECG 4 would be 2 NEMA bands (or 20 percent loss difference) lower than the baseline of ECG 3 due to reduced size of ECG 4 motors. This baseline corresponds with the IE1 level, the lowest level defined by IEC 60034–30–1:2014.

[36] See EERE–2013–BT–STD–0006–0179, p. 18, *www.regulations.gov/document/EERE-2013-BT-STD-0006-0179.*

TABLE IV–5—BASELINE EFFICIENCIES ANALYZED

ECG	ECG motor design type	RU	Description
1	MEM 1–500 hp, NEMA Design A & B	1	NEMA Premium/IE3.
		2	
		3	
		4	
		5	
2	MEM 501–750 hp, NEMA Design A & B	6	Fire Pump.
3	AO–MEM (Standard Frame Size)	7	Fire Pump.
		8	
		9	
		10	
4	AO–Polyphase (Specialized Frame Size)	11	2 NEMA bands below Fire Pump.

c. Higher Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

In the March 2022 Preliminary Analysis, DOE established the higher efficiency levels by shifting the baseline efficiencies up a certain number of NEMA bands. For ECG 1, EL 1 represented a 1 NEMA band increase over baseline efficiency, EL 2 a 2 NEMA band increase, and so on until max-tech. For ECG 3 of this direct final rule (referred to as ''AO–MEMs'' in the March 2022 Preliminary Analysis), EL 1 was NEMA Premium because this ECG had a lower baseline at fire pump levels. EL 2 was 1 NEMA band above premium, EL 3 was 2 NEMA bands above NEMA Premium, and the max-tech was the same as ECG 1. See Chapter 5 of the March 2022 Prelim TSD.

In response to the March 2022 Preliminary Analysis, DOE received comments regarding the analysis used to determine efficiencies at higher levels.

NEMA stated that any performance modeling done by DOE should rely on multiple tested models rather than a single unverified motor performance model (NEMA, No. 22 at p. 2–3). NEMA also stated that building and testing models with high enough volumes to ensure repeatability is the only way to prove the performance of a new steel. (NEMA, No. 22 at p. 11,13)

While DOE acknowledges that testing individual models is the most ideal way to gather performance data for electric motors, given the extremely high volume of horsepower rating, pole configuration, and enclosure combinations, DOE cannot feasibly analyze all of these variations directly, hence, the need for scaling and modeling. Accordingly, DOE retained an electric motors subject matter expert (''SME'') with significant experience in terms of both design and related software, who prepared a set of electric motor designs with increasing efficiency.

DOE concurs that modeling is not an exact equivalent to testing in all regards, and that relative to physical motor units, modeled results may over- or -underestimate performance. That prototyping and testing of production runs are important motor tools does not imply, however, that properly modeled motors would carry no predictive power and could not be of value in estimating electric motor performance. Through confidential interviews of electric motor manufacturers, DOE learned that performance modeling, along with prototyping, is a central element in modern electric motor development. Therefore, DOE does not find justification to abandon modeling as an analytical practice. DOE pairs and informs modeled results using physical testing and teardown of motors purchased on the market, and from performance data collected in the 2022 Motor Database, as detailed in chapter 5 of the direct final rule TSD. The motors that were torn down represented a range of horsepowers, and had efficiencies rated at 2 to 3 NEMA bands above their respective standards. As new designs were created, DOE's SME ensured that the critical performance characteristics that define a NEMA design letter (*e.g.,* locked-rotor torque, breakdown torque, pull-up torque, and locked-rotor currents) were maintained.

As an example on how the modeling was informed by teardowns, DOE's SME used lamination diameters measured during the teardowns as limits for the software models. After establishing baseline models, DOE used the motor design software to incorporate design options (generated in the market and technology assessment and screening analysis) to increase motor efficiency all the way up to the max-tech design. This procedure has been utilized to inform scaling relationships in previous rulemakings, and as such, DOE is continuing to use motor performance modeling as the basis of its efficiency analysis in this direct final rule.

In recognition of the potential for electrical steel quality to vary and of modeled results to diverge from test results of production electric motor designs, DOE opted to use a conservative approach when modeling the performance of electrical steels by using the guaranteed maximum core loss values for various steel grades in place of ''average'' or ''typical'' core loss per pound values. Purchasers of electrical steel cannot rely on a given sample of electrical steel exceeding (*i.e.,* carrying lower loss) the guaranteed loss. However, on a larger scale the steel performance would be expected to converge to the average if steel manufacturers are accurately representing their products.

Separately, NEMA stated that the inrush current of multiple models exceeds the NEMA Design B and C locked-rotor current limits for the following representative units: 5HP, Design B; 5HP, Design C; and 50 HP, Design C. (NEMA, No. 22 at p. 3) NEMA also stated that in order to comply with the test procedure, motors may become NEMA Design A motors with higher inrush current, and that this higher current could create safety issues on other components and would require upgrades and modifications to electrical components of the motor. It stated that not being able to satisfy NEMA Design B requirements would present a loss of consumer utility. (NEMA, No. 22 at p. 2)

DOE disagrees with NEMA's claim that the test procedure rule would require a change in motor design to comply with standards. DOE understands NEMA's comment to relate to the changes to the represented value formula (currently in 10 CFR 429.64) proposed in the test procedure NOPR (86 FR 71710, December 17, 2021). DOE addressed concerns regarding the

updates to the test procedure in the October 2022 Final Rule; specifically, DOE noted that while DOE proposed changes in the formulas used to determine the represented value of a basic model, DOE did not propose to change how the compliance of a given basic model is determined. As such, DOE concluded that the compliance or noncompliance of a basic model would remain unchanged by the publication of this final rule, and therefore, disagreed with NEMA that basic model redesigns would be required to ensure compliance. 87 FR 63588, 63631–63633

As for the representative unit designs not complying with NEMA Design B locked-rotor current requirements, DOE agrees and notes that the voltages specified for those units in the March 2022 Preliminary TSD were incorrect and will be corrected in the TSD of this direct final rule. With that voltage correction, the locked-rotor current units for the mentioned representative units fell within NEMA Design B limits. However, as discussed in section IV.C.1.a, DOE is considering NEMA Design A at higher efficiency levels.

As such, for this direct final rule, DOE considered several design options for higher efficiencies: improved electrical steel for the stator and rotor, using die-cast copper rotors, increasing stack length, and any other applicable design options remaining after the screening analysis when improving electric motor efficiency from the baseline level up to a max-tech level. As each of these design options are added, the manufacturer's cost generally increases and the electric motor's efficiency improves. DOE worked with an SME to develop the highest efficiency levels technologically feasible for each representative unit analyzed, and used a combination of electric motor software design programs and SME input to develop these levels. The SME also checked his designs against tear-down data and calibrated his software using the relevant test results. DOE notes that for all efficiency levels of directly modeled representative units, the frame size was constrained to that of the baseline unit. DOE also notes that the full-load speed of the simulated motors did not stay the same throughout all efficiency levels. Depending on the materials used to meet a given efficiency level, the full-load speed of the motor may increase compared to a lower efficiency model, but for the representative units analyzed this was not always the case. See chapter 5 of the TSD for more details on the full-load speeds of modeled units.

For the max-tech efficiencies in the engineering analysis, DOE considered 35H210 silicon steel, which has the lowest theoretical maximum core loss of all steels considered in this engineering analysis, and the thinnest practical thickness for use in motor laminations. In addition, the max-tech efficiency designs all use die-cast copper rotors, because copper offers better performance than aluminum since it has better electrical conductivity (*i.e.,* a lower electrical resistance), leading to a higher-efficiency design. The max-tech designs also have the highest possible slot fill, maximizing the number of motor laminations that can fit inside the motor. Further details are provided in Chapter 5 of the direct final rule TSD.

For intermediate efficiency levels that were higher than an ECG's baseline but not the max-tech efficiency considered, DOE used different approaches to establish these levels depending on the ECG, as discussed in the next few paragraphs.

For ECG 1, EL 1 was set at IE4 levels (also referred to as NEMA Super-Premium) after receiving feedback during the electric motor working group negotiations that this should be the first EL considered above current standards (in 10 CFR 431.25, IE3 or ''NEMA Premium''), consistent with the progression of the IE levels to represent efficiency, when available. IE4 levels correspond to the efficiency values in Table 10 of IEC 60034–30–1:2014,''Nominal efficiency limits (percentage) for 60 Hz IE4''. DOE notes that the efficiencies at IE4 levels are varying magnitudes above current standard levels, but are typically either 1 or 2 NEMA bands higher depending on pole configuration and horsepower output. Next, DOE defined EL 2 as 2 NEMA bands above current standards and EL 3 as 3 NEMA bands above current standards. For RU1, RU2 and RU5, EL 1 efficiency is the same as EL 2 efficiency because the IE4 efficiencies are the same as the efficiencies at 2 NEMA bands above current standard levels.

When possible, DOE opted to set the intermediate efficiency levels at industry-recognized levels of efficiency like NEMA Premium or IE4. For ECGs 2 and 3, EL 1 was set at current standards since the baseline for these ECGs was lower than current standards. EL 2 was then set at IE4 levels, and EL 3 set at 2 NEMA bands above current standard levels. For RU6, RU7 and RU8, EL 2 efficiency is the same as EL 3 efficiency because the IE4 efficiencies are the same as the efficiencies at 2 NEMA bands above current standards.

For ECG 4, DOE again opted to set the intermediate efficiency levels at industry-recognized levels. Therefore, EL 1 was set at fire pump electric motor levels, EL 2 at current standards or NEMA Premium, and EL 3 at IE4 levels. For RU11, the max-tech efficiency is the same as EL 3 efficiency at IE4.

Table IV–6 presents a summary of the description of the higher efficiency levels analyzed in this direct final rule. For additional details on the efficiency levels, see chapter 5 of the direct final rule TSD.

TABLE IV–6—HIGHER EFFICIENCIES ANALYZED

ECG	RUs	EL0/Baseline	EL1	EL2	EL3	EL4
1	1 through 5	Premium/IE3	Super Premium/IE4	2 NEMA bands above Premium.	3 NEMA bands above Premium.	Max-tech
2	6	Fire pump	Premium/IE3	Super Premium/IE4	2 NEMA bands above Premium.	Max-tech
3	7 through 10	Fire pump	Premium/IE3	Super Premium/IE4	2 NEMA bands above Premium.	Max-tech
4	11	2 NEMA Bands below Fire pump.	Fire pump	Premium/IE3	Super Premium/IE4	Max-tech

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the equipment 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 March 2022 Preliminary Analysis, DOE conducted the analysis using a combination of physical teardowns and software modeling. DOE contracted a professional motor laboratory to disassemble various electric motors and record what types of materials were present and how much of each material was present, recorded in a final bill of materials (''BOM''). To supplement the physical teardowns, software modeling by an SME was also used to generate BOMs for select efficiency levels of directly analyzed representative units. The resulting bill of materials provides the basis for the manufacturer production cost (''MPC'') estimates. See Chapter 5 of the March 2022 Prelim TSD.

In response to the March 2022 Preliminary Analysis, DOE received a number of comments. First, DOE received a comment regarding labor rates and markups used in the engineering analysis. ABB commented that the tabulated cost of labor used in Table 2.5.17 of the March 2022 Prelim TSD does not accurately reflect the current labor market. ABB added that the U.S. labor markets have tightened significantly over the past 12 months, and as a result labor rates have increased significantly. Therefore, ABB commented that they believe the labor rates shown in the table are outdated and need to be revised with current rates. Regarding the magnitude of the factory markup in Table 2.5.17 in the March 2022 Prelim TSD, ABB also commented that they believe that 30 percent is a more accurate estimate than the 15 percent mentioned, and that using the 15 percent markup would result in an underestimation of the cost impacts of factory overhead. (ABB, No. 28 at p. 1)

Regarding labor rates and markups, DOE used the same hourly labor rate for all electric motors analyzed. DOE determined the unburdened labor rate by using the 2007 Economic Census of Industry, and since the March 2022 Preliminary Analysis, updated the labor rate to dollar year 2021 using producer price index (''PPI'') data.[37] DOE understands this method of calculation accounts for changes in the labor market because the PPI data contains information from the current market. In addition, several markups were applied to this hourly rate to obtain a fully burdened rate, which is representative of the labor costs associated with manufacturing electric motors. The markups applied to the base labor cost per hour include indirect production, overhead, fringe, and assembly labor up-time costs. Finally, DOE also incorporated input from manufacturers during interviews on domestic and foreign labor rates to inform the labor cost values used in the engineering analysis in this direct final rule. As such, DOE concludes that the updates to the labor rates since the March 2022 Preliminary Analysis accurately represent current labor market.

Regarding the overhead markup, DOE notes that in the March 2022 Preliminary Analysis, an overhead markup of 30 percent was applied to the unburdened labor rate in line with ABB's recommendation. The 15 percent factory overheard markup referenced in ABB's comment is a separate markup applied to the material cost of a motor, not related to the labor markup of concern. In addition, the factory overhead markup was increased to 20 percent when copper die-casting was used in the rotor. DOE presented the range of factory overhead markups in manufacturer interviews, and either received little feedback, or generally supportive comments from manufacturers. Accordingly, DOE concludes that the factory overhead markups used in the March 2022 Preliminary Analysis sufficiently characterizes the markups used for the cost analysis.

DOE also received a comment regarding material prices. NEMA commented referring DOE to a Department of Commerce study from October 2020 for perspective on conductor prices. NEMA also stated that DOE should update its information to 2022 data and pricing. (NEMA, No. 22 at p. 16) DOE reviewed the Department of Commerce study referenced by NEMA and did not find any specific material pricing information regarding copper or aluminum, the two conductors that this engineering analysis focuses on. In the direct final rule, DOE determined conductor prices based on producer price indices [38] and manufacturer input obtained through interviews.

Regarding the dollar year used for the analysis, DOE usually uses the most recent completed year before the publication of any rulemaking document when presenting pricing information and data to reduce the impact of month-to-month material pricing volatility. However, due to recent pricing volatility as a result of global supply chain issues, DOE is presenting pricing information as a 5-year average price so that the price results can be extrapolated more accurately for use in future years. As such, DOE presents all costs and pricing information as a 5-year average of the years 2017 to 2021 in this direct final rule.

Finally, DOE also received a comment regarding how costs would need to be updated because of the stack length increase. NEMA commented that the stack lengths of motors in Table 2.5.13 of the March 2022 Preliminary Analysis TSD appear to be longer than what would fit in a typical motor housing and stated that DOE needs to consider the cost of redesigning the motor to accommodate the larger stack and all costs of changing the production line. NEMA stated that certain stack lengths may be so long that they are not able to be machine wound, and instead would use the more labor-intensive process of hand winding. NEMA commented that the increased labor requirements would push manufacturers to move production to facilities with lower cost of labor outside of the US and would reduce US jobs. Finally, NEMA stated that the conversion costs of using thinner steels did not capture the conversion costs of using longer stack lengths. NEMA also stated that end-use motor application redesign should be accounted for as well. (NEMA, No. 22 at p. 17)

DOE notes that NEMA did not identify specific units that would have to be hand-wound because of their stack lengths. A given winding machine may have a limit of how long of a stack it can wind, but DOE understands that if the

[37] NAICS code 335312 ''Motor and generator manufacturing'' production workers hours and wages.

[38] Producer Price Index by Commodity: Metals and Metal Products: Copper Wire and Cable (WPU10260314): *https://fred.stlouisfed.org/series/WPU10260314*; Producer Price Index by Commodity: Metals and Metal Products: Extruded Aluminum Rod, Bar, and Other Extruded Shapes (WPU10250162): *https://fred.stlouisfed.org/series/WPU10250162.*

stack length increased beyond this limit, a manufacturer could use the next sized winding machine that they may already use for larger horsepower motors. However, in this direct final rule, DOE is not adopting a standard level that would require motors to be hand-wound, and as such does not find that there will be a push to offshore US manufacturing of electric motors for the standards being finalized. However, separately DOE also performs a manufacturer impact analysis to quantify the costs incurred by the manufacturer to redesign regulated equipment at each efficiency level; see discussion in section IV.J.

Accordingly, in this direct final rule, DOE continues to use the approach from the March 2022 Preliminary Analysis by determining costs using a combination of physical teardowns and software modeling. In addition, as part of this direct final rule, DOE supplemented other critical inputs to the MPC estimate, including material prices assumed, scrap costs, overhead costs, and conversion costs incurred by the manufacturer, using information provided by manufacturers under a nondisclosure agreement through both manufacturer interviews and the Electric Motors Working Group. Through these nondisclosure agreements, DOE solicited and received feedback on inputs like: motor starter costs associated with NEMA Design A motors, recent electrical steel prices by grade, and the MPCs of both Design A and Design B motors at different efficiency levels and rated motor output. See chapter 5 of the direct final rule TSD for more detail on the scrap, overhead, and conversion costs as well as material prices used.

Finally, to account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE 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 electric motor manufacturing and whose combined product range includes electric motors. For motors with a rated output power of 5 or less horsepower, DOE used a non-production markup of 37 percent. For motors rated above 5 horsepower, DOE used a non-production markup of 45 percent.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of MSP (in dollars) versus full-load efficiency (in %), which form the basis for subsequent analysis. DOE developed eleven curves representing the four equipment class groups. The methodology for developing the curves started with determining the full-load efficiency and MPCs for baseline motors. Above the baseline, DOE implemented various combinations of design options to achieve each efficiency level. Design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). To account for manufacturers' non-production costs and profit margin, DOE applies a manufacturer markup to the MPC, resulting in the MSP. See Table IV–7 for the final results. See TSD Chapter 5 for additional detail on the engineering analysis.

TABLE IV–7—COST-EFFICIENCY RESULTS

RU	HP	Pole	Enclosure	Full-load efficiency (%)					MSP (2021$)				
				EL0	EL1	EL2	EL3	EL4	EL0	EL1	EL2	EL3	EL4
1	5	4	Enclosed	89.50	91.00	91.00	91.70	92.40	$340.95	$424.52	$424.52	$459.91	$614.47
2	30	4	Enclosed	93.60	94.50	94.50	95.00	95.40	1,331.45	1,792.24	1,792.24	1,928.42	1,999.62
3	75	4	Enclosed	95.40	95.80	96.20	96.50	96.80	3,724.25	4,577.13	4,943.96	5,219.07	5,541.73
4	150	4	Enclosed	95.80	96.20	96.50	96.80	97.10	6,181.17	6,378.33	8,205.53	8,662.15	9,197.66
5	350	4	Enclosed	96.20	96.80	96.80	97.10	97.40	12,874.60	15,313.54	15,313.54	18,042.15	19,157.57
6	600	4	Enclosed	95.80	96.20	96.80	96.80	97.40	19,711.60	20,532.73	24,422.41	24,422.41	30,552.96
7	5	4	Enclosed	87.50	89.50	91.00	91.00	92.40	304.59	332.96	414.57	414.57	554.40
8	30	4	Enclosed	92.40	93.60	94.50	94.50	95.40	1,281.82	1,326.36	1,785.38	1,785.38	1,975.97
9	75	4	Enclosed	94.10	95.40	95.80	96.20	96.80	3,097.87	3,703.79	4,551.99	4,910.11	5,510.57
10	150	4	Enclosed	95.00	95.80	96.20	96.50	97.10	5,352.67	6,199.20	6,396.94	8,229.47	8,687.42
11	5	4	Enclosed	85.50	87.50	89.50	91.00	91.00	304.59	332.96	414.57	554.40	554.40

In this direct final rule, DOE also added a scenario to account for the fact that some consumers may choose to purchase a synchronous electric motor (out of scope of this direct final rule) rather than a more efficient NEMA Design A or B electric motor or select to purchase a VFD in combination with a compliant electric motor. As such, DOE costed out the price of a synchronous electric motor and a VFD to analyze for this substitution; further discussion on this analysis is provided in Chapter 5 of the direct final rule TSD.

4. Scaling Methodology

Due to the large number of equipment classes, DOE was not able to perform a detailed engineering analysis on each one. Instead, DOE focused its analysis on the representative units and scaled the results to equipment classes not directly analyzed in the engineering analysis. In the March 2022 Preliminary Analysis, DOE used the current standards at 10 CFR 431.25 as a basis to scale the efficiency of the representative units to all other equipment classes. In order to scale for efficiency levels above baseline, the efficiencies for the representative units were shifted up or down by however many NEMA bands, because these bands are commonly used by industry when describing motor efficiency, that efficiency level was above current standards.

In response to the preliminary analysis, NEMA disagreed that a given enclosed motor could meet the same or higher efficiency standards as an open motor. NEMA stated that Part 13 of NEMA MG1 specifies, for many ratings, their standard frame size to be smaller than an enclosed motor of the same frame size. NEMA provided an example of a 7.5 hp, 575V, 2 pole standard NEMA Design A/B motor and state that an open enclosure motor is standard as a 184T frame whereas an enclosed would be a 213T frame. NEMA stated that the ratings for which the standard frame size is the same for an open or enclosed enclosure, the efficiency capability of the open motor is expected to be equal or greater than an enclosed motor because of the reduced windage losses and potentially lower operating temperature. NEMA noted that the specific utility lost by switching from an open motor to an enclosed one would be having to move to a physically larger motor and mounting dimensions for certain ratings. NEMA stated that the

efficiency ratings of NEMA 12–12 is higher for open motors at some ratings, higher for enclosed at others, and in some cases equal in order to retain this utility of having a smaller motor for a given application. (NEMA, No. 22 at p. 6)

DOE acknowledges that the efficiencies would be different for open and enclosed motors for the scope of electric motors being considered in this direct final rule. As such, DOE considered separate efficiencies for open and enclosed motors; although DOE only analyzed enclosed motor representative units as part of the analysis, for the full range of efficiencies being considered for the downstream analysis, DOE considered different efficiencies for open and enclosed. DOE based the relationship between enclosed and open motor efficiencies on Table 5 of 10 CFR 431.25. Specifically, DOE quantified the offset between enclosed and open motor efficiencies for each pole and horsepower combination in terms of NEMA bands. DOE used the same offset to determine the open motor efficiencies from the enclosed motor efficiencies for the full range of pole and horsepower combinations being considered for each ECG and efficiency level analyzed.

In this direct final rule, to scale across horsepower, pole configuration, and enclosure, DOE again relied on industry-recognized levels of efficiency when possible, or shifted forms of these levels. For example: when an efficiency level for a representative unit was NEMA Premium, Table 12–12 of NEMA MG 1–2016 was used to determine the efficiency of all the non-representative unit equipment classes. This method of scaling was also done for IE4 levels of efficiency, electric motor fire pump levels, and shifted versions of NEMA Premium (see Table IV–10 for description of efficiency levels analyzed). DOE relied on industry-recognized levels because they sufficiently capture the effects of enclosure, pole configuration, frame size, and horsepower on motor efficiency.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

In the March 2022 Preliminary Analysis, DOE identified distribution channels for MEM 1–500 hp, NEMA Design A and B and AO–MEM (Standard Frame Size) and their respective market shares (*i.e.,* percentage of sales going through each channel). For these electric motors, the main parties in the distribution chain are OEMs, equipment or motor wholesalers, retailers, and contractors. In response to the March 2022 Preliminary Analysis, DOE did not receive any comment on the distribution channels identified. Therefore, DOE retained these distribution channels for MEM 1–500 hp, NEMA Design A and B and AO–MEM (Standard Frame Size) in the direct final rule. For electric motors above 500 hp and up to 750 hp (''MEM 501–750 hp, NEMA Design A & B''), DOE applied the same distribution channels. For and AO–polyphase (specialized frame size) electric motors which are typically sold through OEMs, DOE assumed that these motors are only sold through distribution channels that include OEMs.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[39]

In the March 2022 Preliminary Analysis, DOE relied on economic data from the U.S. Census Bureau and on 2020 RS Means Electrical Cost Data to estimate average baseline and incremental markups. Specifically, DOE estimated the OEM markups for electric motors based on financial data of different sets of OEMs that use respective electric motors from the latest 2019 Annual Survey of Manufactures.[40] The relevant sets of OEMs identified were listed in Table 6.4.2 of the March 2022 Prelim TSD, using six-digit code level North American Industry Classification System (NAICS). Further, DOE collected information regarding sales taxes from the Sales Tax Clearinghouse.[41] See chapter 6 of the March 2022 Prelim TSD.

In response to the March 2022 Preliminary Analysis, NEMA commented that Table 6.4.2 of the March 2022 Prelim TSD should be replaced by Table IV.3 of the Import Data Declaration Proposed Rule.[42] (NEMA, No. 22 at p. 18)

Table IV.3 of the Import Data Declaration Proposed Rule provides a list of five-digit code level NAICS.[43] DOE reviewed the corresponding six-digit code level NAICS and identified the following additional NAICS code as relevant in the context of OEMs incorporating electric motors in their equipment: 333999 ''All other miscellaneous general Purpose machinery manufacturing''. Other NAICS codes were either already included in the March 2022 Preliminary Analysis or were did not correspond to OEMs incorporating electric motors subject to this DFR in their equipment.

For the direct final rule, DOE revised the OEM baseline and incremental markups calculation to account for this additional NAICS code. In addition, DOE relied on updated data from the economic data from the U.S. Census Bureau and on 2022 RS Means Electrical Cost Data, and the Sales Tax Clearinghouse.

Chapter 6 of the direct final rule TSD provides details on DOE's development of markups for electric motors.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of electric motors at different efficiencies for a representative sample of commercial, industrial, and agricultural consumers, and to assess the energy savings potential of increased electric motor efficiency. The energy use analysis estimates the range of energy use of electric motors in the field (*i.e.,* as they are actually used by consumers). For each consumer in the sample, the energy use is calculated by multiplying the annual average motor input power by the annual operating hours. The

[39] 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.

[40] U.S. Census Bureau. 2019 Annual Survey of Manufactures (ASM): Statistics for Industry Groups and Industries. (Last accessed March 23, 2021.) *www.census.gov/programs-surveys/asm.html.*

[41] Sales Tax Clearinghouse Inc. State Sales Tax Rates Along with Combined Average City and County Rates. July 2021. (Last accessed July 1, 2021.) *thestc.com/STrates.stm.*

[42] NEMA also provided the following link: *www.regulations.gov/document/EERE-2015-BT-CE-0019-0001*

[43] Each five-digit code level NAICS includes several six-digit code level NAICS.

energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

1. Consumer Sample

In the March 2022 Preliminary Analysis, DOE created a consumer sample to represent consumers of electric motors in the commercial, industrial, and agricultural sectors. DOE used the sample to determine electric motor annual energy consumption as well as for conducting the LCC and PBP analyses. Each consumer in the sample was assigned a sector, an application, and a region. The sector and application determine the usage profile of the electric motor and the economic characteristics of the motor owner vary by sector and region. DOE primarily relied on data from the 2018 Commercial Building Energy Consumption Survey (''CBECS''), the 2018 Manufacturing Energy Consumption Survey (''MECS''), the 2013 Farm and Ranch Irrigation Survey, and a DOE–AMO report ''U.S. Industrial and Commercial Motor System Market Assessment Report Volume 1: Characteristics of the Installed Base'' (''MSMA'' or ''DOE–AMO report'').[44] See chapter 7 of the March 2022 Prelim TSD.

In response to DOE's requests for feedback regarding the consumer sample, NEMA referred to the MSMA report (NEMA, No. 22 at p. 19) As previously described, DOE relied on information from the MSMA report to inform its consumer sample. DOE did not receive any additional comments related to the consumer sample developed in the preliminary analysis and retained the same approach for this direct final rule. In addition, for electric motors above 500 hp and up to 750 hp, and AO–polyphase specialized frame size electric motors, DOE applied the same consumer sample.

2. Motor Input Power

In the March 2022 Preliminary Analysis, DOE calculated the motor input power as the sum of (1) the electric motor's rated horsepower multiplied by its operating load (*i.e.,* the motor output power), and (2) the losses at the operating load (*i.e.,* part-load losses). DOE estimated distributions of motor average annual operating load by application and sector based on information from the MSMA report. DOE determined the part-load losses using outputs from the engineering analysis (full-load efficiency at each efficiency level) and published part-load efficiency information from 2016 and 2020 catalog data from several manufacturers to model motor part-load losses as a function of the motor's operating load. See chapter 7 of the March 2022 Prelim TSD.

In response to DOE's requests for feedback regarding distributions of average annual operating load by application and sector, NEMA referred to the MSMA report (NEMA, No. 22 at p. 19) As previously described, DOE relied on information from the MSMA report to characterize average annual operating loads. DOE did not receive any additional comments related to the distributions of operating loads developed in the March 2022 Preliminary Analysis and retained the same approach for this DFR.

DOE did not receive any comments on its approach to determine part-load losses and retained the same methodology for this DFR. However, DOE updated its analysis to account for more recent part-load efficiency information from the 2022 Motor Database. In addition, for electric motors larger than 500 hp and up to 750 hp, and AO–polyphase specialized frame size electric motors, DOE applied the same approach for establishing motor part-load losses and motor input power.

3. Annual Operating Hours

In the March 2022 Preliminary Analysis, DOE used information from the MSMA report to establish distributions of motor annual hours of operation by application for the commercial and industrial sectors. The MSMA report provided average, mean, median, minimum, maximum, and quartile boundaries for annual operating hours across industrial and commercial sectors by application and showed no significant difference in average annual hours of operation between horsepower ranges. DOE used this information to develop application-specific statistical distributions of annual operating hours in the commercial and industrial sectors. See chapter 7 of the March 2022 Prelim TSD.

For electric motors used in the agricultural sector (which were not included in the MSMA report), DOE derived statistical distributions of annual operating hours of irrigation pumps by region using data from the 2013 Census of Agriculture Farm and Ranch Irrigation Survey.

In response to DOE's requests for feedback regarding distributions of average annual operating hours by application and sector, NEMA referred to the DOE MSMA report. (NEMA, No. 22 at p. 20) As previously described, DOE relied on information from the MSMA report to inform its distributions of annual operating hours in the commercial and industrial sectors. For the agricultural sector, which was not included in the MSMA report, DOE relied on additional data sources as previously described. DOE did not receive any additional comments related to the distributions of operating hours developed in the March 2022 Preliminary Analysis and retained the same approach for this final rule. In addition for electric motors larger than 500 hp, DOE also relied on data from the MSMA report to develop operating hours.

4. Impact of Electric Motor Speed

Any increase in operating speeds as the efficiency of the motor is increased could affect the energy saving benefits of more efficient motors in certain variable torque applications (*i.e.,* fans, pumps, and compressors) due to the cubic relation between speed and power requirements (*i.e.,* ''affinity law''). In the March 2022 Preliminary Analysis, DOE accounted for any changes in the motor's rated speed with an increase in efficiency levels, based on the speed information by EL provided in the engineering analysis. Based on information from a European motor study,[45] DOE assumed that 20 percent of consumers with fan, pump, and air compressor applications would be negatively impacted by higher operating speeds. See chapter 7 of the March 2022 Prelim TSD.

The Joint Advocates requested clarifications regarding how DOE accounted for the impact of the increased motor speed on the energy use, as well as how motor slip[46] was

[44] Prakash Rao et al., ''U.S. Industrial and Commercial Motor System Market Assessment Report Volume 1: Characteristics of the Installed Base,'' January 12, 2021, *doi.org/10.2172/1760267.*

[45] ''EuP–LOT–30–Task–7–Jun–2014.Pdf,'' accessed April 26, 2021, *www.eup-network.de/fileadmin/user_upload/EuP-LOT-30-Task-7-Jun-2014.pdf.* The European motor study estimated, as a ''worst case scenario,'' that up to 40 percent of consumers purchasing motors for replacement applications may not see any decrease or increase in energy use due to this impact and did not incorporate any change in energy use with increased speed. In addition, the European motor study also predicts that any energy use impact will be reduced over time because new motor driven equipment would be designed to take account of this change in speed. Therefore, the study did not incorporate this effect in the analysis (*i.e.,* 0 percent of negatively impacted consumers). In the absence of additional data to estimate the percentage of consumers that may be negatively impacted in the compliance year, DOE relied on the mid-point value of 20 percent.

[46] The motor slip is the difference between the motor's synchronous speed and actual speed which is lower than the synchronous speed). At higher

Continued

incorporated into the energy use analysis. (Joint Advocates, No. 27 at p. 4–5)

DOE described the method and assumptions used to calculate the impact of higher speeds (*i.e.,* lower slip) by EL on the energy use in section 7.2.2.1 of the March 2022 Prelim TSD. In the direct final rule TSD, DOE provided additional details on the methodology and equations used as part of Appendix 7A.

NEMA commented that nearly 100 percent of fans, pumps and compressors using electric motors would be negatively impacted by an increase in speed. In addition, NEMA commented that it would take up to two years for OEMs to redesign and recertify an equipment with a motor that has higher speed and provided an example calculation to illustrate the impacts of higher speed operation. (NEMA, No. 22 at pp. 20–21, 49) The Joint Industry Stakeholders commented that DOE should consider the full impact of higher speed motors by taking into account new products as well as replacement. The Joint Industry Stakeholders commented that if lower speed motors are no longer available, appliances may be forced to incorporate higher speed motors which may cause short-cycling in HVAC and refrigeration applications and result in negative impacts in other appliances. (Joint Industry Stakeholders, No. 23 at pp. 8–9)

In this direct final rule, DOE included the effect of increased speeds in the energy use calculation for all equipment classes. DOE reviewed information related to pump, fans, and compressor applications and notes that: (1) seven to 20 percent of motors used in these applications are paired with VFDs which allow the user to adjust the speed of the motor; [47] (2) approximately half of fans operate with belts which also allow the user to adjust the speed of the driven fan; [48] (3) some applications would benefit from increase in speeds as the work would be completed at a higher load in less operating hours (*e.g.* pump filling water tank faster at increased speed); (4) not all fans, pumps and compressors are variable torque loads to which the affinity laws applies. Therefore, less than 100 percent of motors in these applications would experience an increase in energy use as a result of an increase in speed. In addition, as described in the European motor study, the increase in speed would primarily impact replacement motors installed in applications that previously operated with a lower speed motor. For these reasons, DOE determined that assuming that 100 percent of fans, pumps and compressors using electric motors would be negatively impacted by an increase in speed would not be representative. DOE continues to rely on a 20 percent assumption used in the March 2022 Preliminary Analysis. In addition, DOE incorporated a sensitivity analysis allowing the user to consider this effect following scenarios described in Appendix 7–A of the TSD.

Chapter 7 of the direct final rule TSD provides details on DOE's energy use analysis for electric motors.

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 electric motors. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of electric motors 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 consumers. As stated previously, DOE developed consumer samples from various data sources (see section IV.E.1 of this document). For each sample consumer, DOE determined the energy consumption for the electric motor and the appropriate energy price. By developing a representative sample of consumers, the analysis captured the variability in energy consumption and energy prices associated with the use of electric motors.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and electric motor user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 consumer per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of electric motors as if each were to purchase a new product in the first year of required compliance with new or amended standards. DOE

ELs, the speed of a given motor may increase and the motor slip may decrease.

[47] See Figure 64 and Figure 71 of the MSMA report.

[48] See 2016 Fan Notice of Data Availability, 81 FR 75742 (November 1, 2016). LCC spreadsheet, ''LCC sample'' worksheet, ''Belt vs. direct driven fan distribution'' available at *www.regulations.gov/document/EERE-2013-BT-STD-0006-0190.*

expects the direct final rule to publish in the first half of 2023. Therefore, DOE used 2027 as the year of compliance with any new or amended standards for electric motors based on the recommended 4 year compliance period after the direct final rule publication.

Table IV–8 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 LCC model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the direct final rule TSD and its appendices.

TABLE IV–8—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Equipment Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used a constant price trend to project equipment costs based on historical data.
Installation Costs	Installation costs vary by EL. Used input from NEMA and engineering analysis to determine installation costs.
Annual Energy Use	Motor input power multiplied by annual operating hours per year. *Variability:* Primarily based on the MSMA report, 2018 CBECS, 2018 MECS, and 2013 Farm and Ranch Irrigation Survey.
Energy Prices	*Electricity:* Based on EEI Typical Bills and Average Rates Reports data for 2021. *Variability:* Regional energy prices determined for four census regions.
Energy Price Trends	Based on AEO 2022 price projections.
Repair and Maintenance Costs	Repair costs based on Vaughen 2021, varies by EL Assumed no change in maintenance costs with efficiency level.
Equipment Lifetime	*Average:* 11.8–33.6 years depending on the equipment class group and horsepower considered. Shipments-weighted average lifetime is 13.6.
Discount Rates	Calculated as the weighted average cost of capital for entities purchasing electric motors. Primary data source was Damodaran Online.
Compliance Date	2027.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the direct final rule TSD.

In response to the preliminary analysis, the Joint Stakeholders commented that double-regulation has no corresponding consumer benefits in the form of reduced power consumption given the appliance regulations being unchanged and the fact that a more efficient motor does not necessarily translate to a more efficient product when incorporated into a finished good. The Joint Stakeholders commented that to potentially increase the cost of an OEM product, without a corresponding energy savings would mean a net loss for consumers and negative national impacts. The Joint Industry Stakeholders noted that the DOE used operating hours for the following categories of equipment: air compressors, refrigeration compressors, fans and blowers, pumps material handling, material processing, other, and agricultural pumps. Of these, the Joint Stakeholders noted that electric motors used in air compressors, refrigeration compressors, fans and blowers, pumps and agricultural pumps are already regulated to some extent and that DOE made no apparent effort to account for this and deduct a significant portion of those estimated hours (Joint Industry Stakeholders, No. 23 at p. 5) Lennox commented that DOE must accurately assess, and avoid double-counting, energy savings when assessing potential efficiency improvements from motors used in already-regulated HVAC equipment. Lennox commented that it is unclear in the LCC and payback periods analysis if DOE accounted for double regulation and eliminated energy savings already achieved from system-level HVACR regulation. (Lennox, No. 29 at p. 4) HI commented that there is a potential for duplicate accounting of energy savings when regulating motors in general. In addition, there is a potential for other motor product efficiencies to be counted twice such as the use of inverter-only products in pumps when the DOE calculates savings in their evaluations (one for inverter only motors, and another for pumps using those motors). (HI, No. 31 at p. 1) NEMA commented that many of the proposed additions to scope are accompanied by erroneous claims of potential energy savings, owing to the fact that the added motors are components to other regulated appliances and devices. They commented that their review of the document shows instances where the DOE is anticipating energy savings on products that will be used in other covered products, suggesting the potentially significant overstatement of potential energy savings benefits. (NEMA, No. 22 at p. 5)

As highlighted in a previous DOE report, motor energy savings potential and opportunities for higher efficiency electric motors in commercial and residential equipment would result in overall energy savings.[49] In addition, some manufacturers advertise electric motors as resulting in energy savings in HVAC equipment.[50] Therefore, DOE disagrees with the Joint Industry Stakeholders that an increase in motor efficiency would not necessarily result in a more efficient equipment when incorporated into a given equipment. In addition, DOE's analysis ensures the LCC and NIA analysis do not result in double-counting of energy savings by accounting for consumers who already purchase more-efficient products and calculating LCC and energy savings relative to a no-new standards case efficiency distribution. See Section IV.F.8 for more details. DOE applies the same approach in other equipment rulemakings, and evaluates energy savings relative to a no-new standards case efficiency distribution that accounts for consumers who already purchase more-efficient equipment incorporating more efficient motors. As such, any future analysis in support of energy conservation standards for equipment incorporating motors would also account for equipment that already incorporate more-efficient electric

[49] U.S. DOE Building technology Office, Energy Savings Potential and Opportunities for High-Efficiency Electric Motors in residential and Commercial Equipment, December 2013. Available at: *www.energy.gov/eere/buildings/downloads/motor-energy-savings-potential-report*

[50] See for example Nidec and ABB: *acim.nidec.com/motors/usmotors/industry-applications/hvac; bit.ly/3wEIQyu*

motors and would not result in any double counting of energy savings resulting from motor efficiency improvements.

In the direct final rule TSD, DOE added a scenario to account for the fact that some consumers may choose to purchase a synchronous electric motor (out of scope of this direct final rule) rather than a more efficient NEMA Design A or B electric motor or select to purchase a VFD in combination with a compliant electric motor. DOE developed a consumer choice model to estimate the percentage of consumers that would purchase a synchronous electric motor based on the payback period of such investment. See Appendix 8–D for more details on this analysis. DOE notes that there is uncertainty as to which rate such substitution would occur and did not incorporate this scenario as part of the reference analysis.

1. Equipment Cost

To calculate consumer product costs, DOE multiplied the MSPs developed in the engineering analysis by the distribution channel markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. 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 a price trend for electric motors, DOE obtained historical PPI data for integral horsepower motors and generators manufacturing spanning the time period 1969–2021 from the Bureau of Labor Statistics' (''BLS'').[51] The PPI data reflect nominal prices, adjusted for electric motor quality changes. An inflation-adjusted (deflated) price index for integral horsepower motors and generators manufacturing was calculated by dividing the PPI series by the implicit price deflator for Gross Domestic Product. The deflated price index for integral horsepower motors was found to align with the copper, steel and aluminum deflated price indices. DOE believes that the extent to how these trends will continue in the future is very uncertain. Therefore, DOE relied on a constant price assumption as the default price factor index to project future electric motor prices.

DOE did not receive any comments on price trends in response to the preliminary analysis and followed the same methodology in the direct final rule.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. In the March 2022 Preliminary Analysis, DOE considered that all motors would remain NEMA Design B as efficiency increased, and DOE found no evidence that installation costs would be impacted with increased efficiency levels. Therefore, in the March 2022 Preliminary Analysis, DOE did not incorporate changes in installation costs for motors that are more efficient than baseline equipment. DOE assumed there was no variation in installation costs between a baseline efficiency motor and a higher efficiency motor except in terms of shipping costs. These shipping costs were based on weight data from the engineering analysis for the representative units. See chapter 8 of the March 2022 Prelim TSD.

In response to the preliminary analysis, EASA stated that there is no simple or reliable method to estimate the installation time and costs for synchronous motors under 100 hp because they are typically embedded into a machine like a fan or compressor. EASA further commented that submersible motors do not have a simple or reliable method to estimate their installation costs because of the physically connected piping that would require more time to install than a typical motor. EASA commented that inverter-only motors probably do not require additional time and cost to install compared to non-inverter motor unless they require additional wiring for feedback devices and sensors or mitigation of harmonics. (EASA, No. 21 at pp. 3–4)

DOE is not including synchronous electric motors, submersible electric motors, and inverter-only motors in the scope of this direct final rule.

EASA commented that motors above 500 hp have additional rigging costs during installation because of their size and sometimes difficult to access locations. EASA stated that there is not a simple or reliable method to estimate the installation time and costs for this size of motor. (EASA, No. 21 at p. 3) NEMA commented that DOE should include costs for rigging (hoisting) for larger motors due to their extreme weight. As rated horsepower increases, so too does the expense and time to move them safely. (NEMA, No. 22 at p. 22)

DOE agrees that at a given efficiency level, the installation costs will vary as a function of the motor's weight. However, DOE did not find evidence that rigging costs (for a given motor size) would be impacted with increased efficiency levels as the variations in weights by EL are not significant enough to change the equipment and labor required to hoist the motor as compared to the baseline.

EASA commented that if a motor is replaced with a physically larger frame, the replacement would have higher installation costs because of the added complexity of modifying the mounting setup to accommodate the larger motor, and in some case would be impossible. (EASA, No. 21 at p. 2–3)

As noted in section IV.C of this document, DOE fixed the frame size which remains the same across efficiency levels. Therefore, DOE did not account for any changes in installation costs due to changes in frame sizes in this direct final rule.

In addition, as noted in IV.C.1.a, in this direct final rule, DOE revised the engineering approach, and assumed that higher efficiency motors above the baseline would meet the characteristics of a NEMA A motors and have higher inrush currents. Therefore, based on input from NEMA, DOE estimated the additional installation costs associated with the higher inrush current at efficiency levels above baseline, and incorporated these costs in the analysis.

3. Annual Energy Consumption

For each sampled consumer, DOE determined the energy consumption for an electric motor at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

[51] Serie PCU3353123353121 for integral horsepower motors and generators manufacturing; *www.bls.gov/ppi/.*

DOE derived electricity prices in 2021 using data from EEI Typical Bills and Average Rates reports. Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For all sectors, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[52]

DOE's methodology allows electricity prices to vary by sector, region and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For electric motors, DOE relied on variability by region and sector. See chapter 8 of the final rule TSD for details.

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by the projection of annual average price changes for each sector from the Reference case in *AEO2022,* which has an end year of 2050.[53] To estimate price trends after 2050, DOE used the 2050 electricity prices, held constant.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product

In the March 2022 Preliminary Analysis, for the maintenance costs, DOE did not find data indicating a variation in maintenance costs between baseline efficiency and higher efficiency motors. The cost of replacing bearings, which is the most common maintenance practice, is constant across efficiency levels. Therefore, DOE did not include maintenance costs in the LCC analysis. See chapter 8 of the March 2022 Prelim TSD.

DOE did not receive any comments related to maintenance costs and retained the same approach in this direct final rule.

DOE defines motor repair as including rewinding and reconditioning. In the March 2022 Preliminary Analysis, DOE estimated repair costs as a function of efficiency based on data from 2021 Vaughen's National Average Prices. Based on these data, DOE estimated the repair costs for baseline electric motors, and used a 15 percent repair cost increase per NEMA efficiency band increase. In addition, DOE considered that electric motors at or below 20 horsepower were not repaired. DOE also assumed that electric motors with a horsepower greater than 20 and less than or equal to 100 horsepower are repaired once over their lifetime, while electric motors with a horsepower greater than 100 and less than or equal to 500 are repaired twice over their lifetime. DOE also assumed that all electric motors above 20 horsepower would be repaired at least one, regardless of the sampled lifetime. As a sensitivity analysis, DOE also considered an alternative scenario where motors are repaired only upon meeting certain lifetime criteria. See chapter 8 of the March 2022 Prelim TSD.

In response to the March 2022 Preliminary Analysis, EASA and NEMA stated that DOE may have overlooked non-rewinding repairs like bearing changes and stated that these repairs occur 5–7 times more often than rewinds regardless of motor output power. (EASA, No. 21 at p. 3; NEMA, No. 22 at p. 21) As noted previously, DOE defines motor repair as including rewinding and reconditioning. Other non-rewinding related practices such as bearing replacement were considered as part of the maintenance costs.

EASA commented that a higher efficiency motor may require more material (*e.g.* copper magnet wire) and more labor to rewind windings with the higher slot fill that is typical of high efficiency designs. EASA also state that section 2.8.5 of the preliminary analysis TSD attributes a 15 percent increase in repair cost due to higher efficiency which contradicts Table 2.8.1 of the preliminary analysis TSD that states ''assumed no change with efficiency level'' for repair costs. (EASA, No. 21 at pp. 3–4) NEMA commented that as efficiency increases, the rate of hand winding increases. Repairing hand-wound motors may take longer as they are usually would by hand to accomplish very tight stacking. Rewinding such motors will take longer and cost more than random wound designs (NEMA, No. 22 at p. 22) NEMA also commented that the discussion on section 2.8.5 of the preliminary analysis TSD contradicted the summary table 2.8.1. of the preliminary analysis TSD (NEMA, No. 22 at p. 22)

As noted by NEMA and EASA, more efficient motors are more expensive to repair. In the March 2022 Preliminary Analysis, DOE estimated the repair costs for baseline electric motors, and used a 15 percent repair cost increase per NEMA efficiency band increase to characterize the increase in repair costs with increased electric motor efficiency. In this direct final rule, DOE continues to apply an increase in repair costs at higher efficiency, and because the increase is directly related to the increase in material costs, DOE assumed the repair costs would increase similarly to the MSP instead of applying a 15 percent increase per NEMA efficiency band increase. DOE notes a typographical error in Table 2.8.1 of the preliminary analysis TSD. In that Table, DOE omitted to describe the repair cost assumption, and the statement only applies to the maintenance costs.

EASA and NEMA commented that they believe 20 horsepower is not a valid breakpoint for a repair/replace decision on electric motors. In practice, EASA and NEMA commented that the horsepower breakpoint may be as high as 100 horsepower on motors readily available from stock. Also, special OEM motors and IEC motors that may be unavailable from inventory may be rewound more often than other motors and in lower power ratings due to need to keep equipment in service. (EASA, No. 21 at p. 2; NEMA, No. 22 at p. 21) EASA provided data from 2017–2021 regarding 11,000 technical inquiries they received about rewinding motors. The data showed that 32 percent, 29 percent, 31 percent and 8 percent of inquiries related to motors with horsepower below 20, between 20 and 100 hp, between 100–500 hp, and greater than 500 hp, respectively. (EASA, No. 21 at p. 2) EASA commented that getting substantive data on repair likelihood would require polling a large sample of end-users and providing them with the definition of repair given in 8.3.3. of the preliminary analysis TSD.[54] (EASA, No. 21 at p. 4)

Since the publication of the March 2022 Preliminary Analysis, DOE reviewed additional information related to repair practices. DOE found that although a breakpoint of 20 hp reflects the breakpoint below which the repair cost for is equivalent to or exceeds the cost of a new motor, the decision to repair or replace the motor is not only based on a cost effectiveness criteria.[55] Specifically, in most facilities the cost of lost production or customer

[52] Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203. *https://ees.lbl.gov/publications/non-residential-electricity-prices.*

[53] U.S. Energy Information Administration. *Annual Energy Outlook 2022.* 2022. Washington, DC (Last accessed June 1, 2022.) *https://www.eia.gov/outlooks/aeo/index.php.*

[54] DOE defined a motor repair as repair as including rewinding and reconditioning

[55] ''US Department of Energy, Advanced Manufacturing Office, Premium Efficiency Motor Selection and Application Guide,'' February 2014, *www.energy.gov/sites/prod/files/2014/04/f15/amo_motors_handbook_web.pdf.*

inconvenience from downtime outweighs any cost differences between repairing or replacing a failed motor. As noted by EASA, the need to keep the equipment in service also affects the repair or replace decision. In addition, when replacing a motor, another major concern is stock availability. Most motors under 100 hp will typically be available on the shelf at the facility while larger and specialty motors will not.[56] Based on this additional information, DOE updated the repair breakpoint from 20 hp to 100 hp. As such DOE considered that electric motors below 100 hp would not be repaired while motors above 100 hp would be repaired at least once. In addition, DOE revised the analysis to consider that specialty electric motors, which are less likely to be in stock would be repaired regardless of their size.

The Joint Advocates observed that for several representative units of currently-covered motors, the lifetime operating costs increased at higher EL and commented that DOE should review the repair assumptions and costs to ensure that operating costs at higher ELs are not over-estimated. Specifically, the Joint Advocates commented that DOE should use the alternative scenario, wherein a motor is only assumed to be repaired if that motor's projected lifetime is greater than half of the average motor lifetime. The Joint Advocates commented that this alternative approach is similar to that used in the analysis for motor replacements in the direct final rule for dedicated-purpose pool pumps [57] and would result in LCCs that are more reflective of real-world repair/replacement decisions. (Joint Advocates, No. 27 at p. 3–4)

In this direct final rule, DOE revised the repair assumptions to align with the alternative scenario presented in the March 2022 Preliminary Analysis. As noted by the Joint Advocates, this scenario, which assumes that motors with longer lifetimes would be repaired more often is more representative of industry practice.

6. Equipment Lifetime

In the March 2022 Preliminary Analysis, for electric motors regulated at 10 CFR 431.25, DOE estimated the average mechanical lifetime of electric motors (*i.e.,* the total number of hours an electric motor operates throughout its lifetime) and used different values depending on the electric motor's horsepower. For NEMA Design A and B electric motors, and AO MEMs, DOE established sector-specific average motor lifetime estimates to account for differences in maintenance practices and field usage conditions. In addition, DOE applied a maximum lifetime of 30 years as used in the May 2014 Final Rule. DOE then developed Weibull distributions of mechanical lifetimes. The lifetime in years for a sampled electric motor is calculated by dividing the sampled mechanical lifetime by the sampled annual operating hours of the electric motor. This model produces a negative correlation between annual hours of operation and electric motor lifetime. Electric motors operated many hours per year are likely to be retired sooner than electric motors that are used for only a few hours per year. In addition, DOE considered that electric motors of less than or equal to 75 horsepower are most likely to be embedded in a piece of equipment (*i.e.,* an application). For such applications, DOE developed Weibull distributions of application lifetimes expressed in years and compared the sampled motor mechanical lifetime (in years) with the sampled application lifetime. DOE assumed that the electric motor would be retired at the earlier of the two lifetimes. See chapter 8 of the March 2022 Prelim TSD.

In response to the March 2022 Preliminary Analysis, NEMA commented that the lifetimes assigned to the representative units appear to be sufficiently accurate. (NEMA, No. 22 at p. 22). The CA IOUs recommended higher maximum lifetimes for NEMA Designs A and B electric motors beyond 30 years and provided data to justify a higher maximum lifetime. Specifically, the CA IOUs referenced the MSMA report which shows that 5.4 percent of motors with legible nameplate were older than 30 years, including 3.4 percent of motors rated 101 to 500 hp which had lifetimes of at least 50 years. The CA IOUs also cited the Swiss EASY program which showed motors of 40 years still in operation. Finally the CA IOUs cited the ''Energy-Efficient Motor Systems: A Handbook on Technology, Program, and Policy Opportunities'' which references average lifetimes of 30 years for motors larger than 50 hp. (CA IOUs, No. 30 at p. 3)

DOE reviewed the data provided by the CA IOUs. As noted by the CA IOUs, the maximum lifetime of 30 years assumed in the March 2022 Preliminary Analysis is not representative as some motors are reported to have a lifetime exceeding 50 years. In this direct final rule, DOE revised the maximum lifetime of NEMA Designs A and B electric motors and AO MEMs from 30 years to 60 years based on information from the MSMA report which showed motors still in operation after 50 years.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to consumers to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for electric motors based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[58] The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their 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 commercial and industrial discount rates, DOE estimated the weighted-average cost of capital using data from Damodaran Online.[59] The weighted-average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing. DOE estimated the cost of equity using the

[56] Bonneville Power Administration, ''Quality Electric Motor Repair, a Guidebook for Electric Utilities'' *digital.library.unt.edu/ark:/67531/metadc665937/m2/1/high_res_d/237370.pdf.*

[57] See 82 FR 5650 (January 18, 2017).

[58] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[59] Damodaran, A. *Data Page: Historical Returns on Stocks, Bonds and Bills-United States.* 2021. (Last accessed April 26, 2022.) *pages.stern.nyu.edu/~adamodar/.*

capital asset pricing model, which assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company. The average commercial, industrial, and agricultural discount rates in 2022 are 6.8 percent, 7.2 percent, and 7.1 percent respectively.

In response to the March 2022 Preliminary Analysis, DOE did not receive any comments on discount rates.

See chapter 8 of the direct final rule 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 equipment efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

In the March 2022 Preliminary Analysis, to estimate the energy efficiency distribution of electric motors for 2027, DOE relied on model counts by efficiency from the 2016 and 2020 Manufacturer Catalog Data and assumed no changes in electric motor efficiency over time. In some cases where DOE did not have enough models with efficiency information within a single horsepower range, DOE aggregated horsepower ranges. In addition for certain AO–SNEM electric motors, DOE did not find enough models with efficiency information to develop a distribution and used the efficiency distributions of the corresponding non-AO equipment class instead. In the March 2022 Preliminary Analysis, DOE used a Monte Carlo simulation to draw from the efficiency distributions and randomly assign an efficiency to the electric motor 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. See chapter 8 of the March 2022 Prelim TSD.

NEMA disagreed with the DOE estimates for AO MEMs efficiency distributions and commented that these distributions were modeled/estimated, rather than gathered properly and accurately through testing and other means. NEMA commented that DOE should not develop estimates and interpolations and instead finalize test procedures. NEMA added that energy efficiency information does not exist because Federal test procedures for some of these motors have not been established. (NEMA, No. 22 at p. 23)

DOE notes that NEMA did not provide any data to support alternative efficiency distributions. In the absence of such data, DOE relied on model counts by efficiency from manufacturer Catalog Data and updated the data to reflect 2022 catalog offerings (using the 2022 Motor Database). For AO Polyphase specialized frame electric motors, DOE did not find any catalog data to characterize their efficiency distributions and assumed all motors were at the baseline, because the OEM market is cost-driven. As such these motors are typically built on a first-cost basis and are not optimized for efficiency.[60] In addition, the electric motors test procedure, which relies on industry test methods published in 2016,[61] was finalized on October 19, 2022. 87 FR 63588 For air-over motors, DOE believes manufacturers currently use the industry test methods (which were adopted in the October 2022 Final Rule) to evaluate the efficiency of electric motors as reported in their catalogs, which is in line with the DOE test procedure as finalized.

As previously noted, in the March 2022 Preliminary Analysis, DOE assumed no changes in electric motor efficiency over time. DOE did not receive any comment on this assumption and retain the same approach in this direct final rule: to estimate the energy efficiency distribution of electric motors for 2027, DOE assumed no changes in electric motor efficiency over time. The estimated market shares for the no-new-standards case for electric motors are shown in Table IV–9 by equipment class group and horsepower range.

TABLE IV–9—NO-NEW STANDARDS CASE EFFICIENCY DISTRIBUTIONS IN THE COMPLIANCE YEAR

Equipment class group	Horsepower range	EL0 (%)	EL1 (%)	EL2 (%)	EL3 (%)	EL4 (%)
MEM 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	79.8	18.8	0.0	0.9	0.6
	5 < hp ≤ 20	93.9	5.4	0.0	0.5	0.1
	20 < hp ≤ 50	93.9	5.4	0.0	0.5	0.1
	50 < hp <100	89.6	1.2	6.7	2.5	0.0
	100 ≤ hp ≤ 250	85.9	7.0	6.5	0.6	0.0
	250 < hp ≤ 500	91.9	8.1	0.0	0.0	0.0
MEM 501–750 hp, NEMA Design A & B	500 < hp ≤ 750	10.5	73.7	15.8	0.0	0.0
AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	33.3	64.3	2.3	0.0	0.0
	20 < hp ≤ 50	10.3	89.7	0.0	0.0	0.0
	50 < hp < 100	0.0	100.0	0.0	0.0	0.0
	100 ≤ hp ≤ 250	16.7	75.0	8.3	0.0	0.0
AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	100	0	0	0	0

* May not sum to 100% due to rounding.

The existence of market failures in the commercial and industrial sectors is well supported by the economics literature and by a number of case studies as discussed in the remainder of this section. DOE did not receive any comments specific to the random assignment of no-new-standards case efficiencies (sampled from the developed efficiency distribution) in the LCC model and continued to rely on the same approach to reflect market failures in the motor market, as noted in the following examples. First, a recognized problem in commercial settings is the

[60] See, Almeida, Anibal T., et al. 2008. *EuP Lot 11 Motors, Ecodesign Assessment of Energy Using Products.* s.l.: ISR-University of Coimbra for the European Commission Directorate General for Mobility and Transport, 2008. (p.117). Available at: *circabc.europa.eu/sd/d/62415be2-3d5a-4b3f-b29a-d1760f4dc11a/Lot11Motors1-8final28-04-08.pdf.*

[61] NEMA Standards Publication MG 1–2016, ''Motors and Generators: Air-Over Motor Efficiency Test Method Section IV Part 34'', *www.nema.org/docs/default-source/standards-document-library/part-34-addition-to-mg1-2016-watermarkd91d7834-cf4f-4a87-b86f-bef96b7dad54.pdf?sfvrsn=cbf1386d_3.*

principal-agent problem, where the building owner (or building developer) selects the equipment and the tenant (or subsequent building owner) pays for energy costs.[62] [63] In the case of electric motors, for many companies, the energy bills are paid for the company as a whole and not allocated to individual departments. This practice provides maintenance and engineering staff little incentives to pursue energy saving investments because the savings in energy bills provide little benefits to the decision-making maintenance and engineering staff. (Nadel et al.) [64] Second, the nature of the organizational structure and design can influence priorities for capital budgeting, resulting in choices that do not necessarily maximize profitability.[65] In the case of electric motors, within manufacturing as a whole, motor system energy costs constitute less than 1 percent of total operating costs and energy efficiency has a low level of priority among capital investment and operating objectives. (Xenergy,[66] Nadel et al.) Third, there are asymmetric information and other potential market failures in financial markets in general, which can affect decisions by firms with regard to their choice among alternative investment options, with energy efficiency being one such option.[67] In the case of electric motors, Xenergy identified the lack of information concerning the nature of motor system efficiency measures—their benefits, costs, and implementation procedures—as a principal barrier to their adoption. In addition, Almeida [68] reports that the attitude of electric motor end-user is characterized by bounded rationality where they adopt 'rule of thumb' routines because of the complexity of market structure which makes it difficult for motors end-users to get all the information they need to make an optimum decision concerning allocation of resources. The rule of thumb is to buy the same type and brand as the failed motor from the nearest retailer. Almeida adds that the same problem of bounded rationality exists when end-users purchase electric motors incorporated in larger equipment. In general, end-users are only concerned about the overall performance of a machine, and energy efficiency is rarely a key factor in this performance. Motor selection is therefore often left to the OEM, which are not responsible for energy costs and prioritize price and reliability.

See chapter 8 of the direct final rule TSD for further information on the derivation of the efficiency distributions.

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the new or amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[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.

In the March 2022 Preliminary Analysis, DOE estimated shipments in the base year (2020). DOE estimated the shipments of NEMA Design A and B electric motors regulated under 10 CFR 431.25 to be approximately 4.5 million units in 2020 based on data from the 2019 Low-Voltage Motors, World Market Report, and on the share of low-voltage motors that are subject to the electric motors energy conservation standards. DOE estimated the total shipments AO–MEMs in 2020 to be 240,000 units. For electric motors regulated under 10 CFR 431.25, DOE developed a distribution of shipments by equipment class group, horsepower, enclosure, and poles based on data from manufacturer interviews. For AO–MEMs, DOE relied on model counts from the 2020 and 2016/2020 Manufacturer Catalog Data. DOE also provided shipments estimates for additional categories of electric motors not analyzed in the preliminary analysis such as electric motors with horsepower greater than 500 hp. See chapter 9 of the March 2022 Prelim TSD.

[62] Vernon, D., and Meier, A. (2012). ''Identification and quantification of principal–agent problems affecting energy efficiency investments and use decisions in the trucking industry,'' *Energy Policy,* 49, 266–273.

[63] Blum, H. and Sathaye, J. (2010). ''Quantitative Analysis of the Principal-Agent Problem in Commercial Buildings in the U.S.: Focus on Central Space Heating and Cooling,'' Lawrence Berkeley National Laboratory, LBNL–3557E. (Available at: *escholarship.org/uc/item/6p1525mg*) (Last accessed January 20, 2022).

[64] Nadel, S., R.N. Elliott, M. Shepard, S. Greenberg, G. Katz & A.T. de Almedia. 2002. *Energy-Efficient Motor Systems: A Handbook on Technology, Program and Policy Opportunities.* Washington, DC: American Council for an Energy-Efficient Economy. Second Edition.

[65] DeCanio, S.J. (1994). ''Agency and control problems in US corporations: the case of energy-efficient investment projects,'' *Journal of the Economics of Business,* 1(1), 105–124.

Stole, L.A., and Zwiebel, J. (1996). ''Organizational design and technology choice under intrafirm bargaining,'' *The American Economic Review,* 195–222.

[66] Xenergy, Inc. (1998). United States Industrial Electric Motor Systems Market Opportunity Assessment. (Available at: *www.energy.gov/sites/default/files/2014/04/f15/mtrmkt.pdf*) (Last accessed January 20, 2022).

[67] Fazzari, S.M., Hubbard, R.G., Petersen, B.C., Blinder, A.S., and Poterba, J.M. (1988). ''Financing constraints and corporate investment,'' *Brookings Papers on Economic Activity,* 1988(1), 141–206.

Cummins, J.G., Hassett, K.A., Hubbard, R.G., Hall, R.E., and Caballero, R.J. (1994). ''A reconsideration of investment behavior using tax reforms as natural experiments,'' *Brookings Papers on Economic Activity,* 1994(2), 1–74.

DeCanio, S.J., and Watkins, W.E. (1998). ''Investment in energy efficiency: do the characteristics of firms matter?'' *Review of Economics and Statistics,* 80(1), 95–107.

Hubbard R.G. and Kashyap A. (1992). ''Internal Net Worth and the Investment Process: An Application to U.S. Agriculture,'' *Journal of Political Economy,* 100, 506–534.

[68] de Almeida, E.L.F. (1998). ''Energy efficiency and the limits of market forces: The example of the electric motor market in France'', *Energy Policy,* 26(8), 643–653.

[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.

NEMA commented that shipments for motors above 500 hp were over-estimated (NEMA, No. 22 at p. 24) During the electric motor working group negotiations, NEMA provided an estimate of 250—400 units sold per year. NEMA also provided an estimate of 180,000 units for AO MEMs, and 20,000 units for AO polyphase specialized frame size electric motors. In this direct final rule, DOE is including electric motors with horsepower greater than 500 hp and relied on NEMA's input to estimate shipments to 375 units in the base year. For AO MEMs and AO polyphase specialized frame size electric motors, DOE revised the total shipments to align with NEMA's estimate and revised the distribution of shipments by horsepower range based on model counts from the 2022 Motor Database. DOE did not receive any additional comments related to the base year shipments estimates and retained the values estimated in the March 2022 Preliminary Analysis for NEMA Design A and B motors between 1—500 hp.

In the March 2022 Preliminary Analysis, for NEMA A and B electric motors which are primarily used in the industry and commercial sectors, DOE projected shipments in the no-new standards case under the assumption that long-term growth of electric motor shipments will be driven by long-term growth of fixed investments. DOE relied on the AEO 2021 forecast of fixed investments through 2050 to inform its shipments projection. For the years beyond 2050, DOE assumed that fixed investment growth will follow the same growth trend as GDP, which DOE projected for years after 2050 based on the GDP forecast provided by AEO 2021. For AO–MEM electric motors, which are typically lower horsepower motors, DOE projected shipments using the following sector-specific market drivers from AEO 2021: commercial building floor space, housing numbers, and value of manufacturing activity for the commercial, residential, and industrial sector, respectively. In addition, DOE kept the distribution of shipments by equipment class group/horsepower range constant across the analysis period. Finally, in each standard case, DOE accounted for the possibility that some consumers may choose to purchase a synchronous electric motor (out of scope of this preliminary analysis) rather than a more efficient NEMA Design A or B electric motor. DOE developed a consumer choice model to estimate the percentage of consumers that would purchase a synchronous electric motor based on the payback period of such investment.

In response to the March 2022 Preliminary Analysis, NEMA commented that they do not anticipate horsepower shifts from technology changes. NEMA also noted that, as an example, increased emission requirements for stationary diesel pump drivers will increase demand for larger 200 hp and above electric motors. (NEMA, No. 22 at p. 24) NEMA did not provide any additional comments regarding shipments projections. DOE did not receive any additional comments related to shipments and retained the same methodology as in the preliminary analysis and updated the analysis to reflect AEO 2022. DOE applied the same shipments trends to electric motors above 500 hp.

With respect to synchronous motors, NEMA commented that in section 2.9.5 of the March 2022 Prelim TSD, DOE notes that synchronous motors are less efficient than their Design A or B counterparts, which NEMA does not agree with. Furthermore, NEMA stated that a focus on single point efficiency at full load misses the benefit synchronous motors provide (variable load and reduced speed operation). (NEMA, No. 22 at p. 24)

DOE clarifies that Table 2.9.5 of the March 2022 Preliminary Analysis TSD did not provide information related to the efficiency of synchronous motors. Instead, Table 2.9.5 of the March 2022 Prelim TSD presented the percentage of consumer that would select a synchronous motor over a compliant induction motor in each considered standard level case. In addition, as noted by NEMA, synchronous motors offer additional energy savings benefits through variable load and reduced speed operation and DOE accounted for these savings in the preliminary analysis by applying a reduction of energy of 30 percent based on information from a previous DOE study.[70] (See section 9.4 of the March 2022 Prelim TSD).

The Electric Motors Working Group stated that to achieve IE4 efficiency levels, manufacturers would likely shift from NEMA Design B to NEMA Design A motors. This shift may result in the increased adoption of variable frequency drives (VFDs), which would significantly increase energy savings. Furthermore, while DOE's March 2022 Preliminary Analysis looked only at substitutions to synchronous motors up to 100 hp, the increased adoption of VFDs (paired with an IE4 motor) would also be relevant at higher horsepower levels. The Electric Motors Working Group therefore encouraged DOE to include this VFD substitution in its analysis and added that with these substitutions, DOE's updated analysis will show the recommended efficiency levels to be cost effective. The Electric Motors Working Group did not provide estimates regarding the rate at which this substitution would occur.

In the direct final rule TSD, DOE added a scenario to account for the fact that some consumers may choose to purchase a synchronous electric motor (out of scope of this direct final rule) rather than a more efficient NEMA Design A or B electric motor or select to purchase a VFD in combination with a compliant electric motor. Similar to the approach used in the March 2022 Preliminary Analysis, DOE developed a consumer choice model to estimate the percentage of consumers that would purchase a synchronous electric motor based on the payback period of such investment. DOE notes that there is uncertainty as to which rate such substitution would occur and did not incorporate this scenario as part of the reference analysis. To support the payback calculation, DOE accounted for the total installed costs and annual operating costs of a synchronous motor and of a VFD in combination with a compliant electric motor. In addition, DOE updated its previous estimate of energy use reduction resulting from variable load and reduced speed operation based on a more recent study. See appendix 8–D of the DFR TSD for more details on this analysis.

NEMA added that comparing a synchronous motor and drive combination to an induction motor is not an apples-to-apples comparison and should be avoided. NEMA stated that the application of motor-drive systems are application dependent. NEMA stated that programs which encourage and facilitate power drive system installations in the field and during planning are the appropriate vehicles for market transformation, not point-of-sale regulations such as those in question of the PTSD. NEMA stated that DOE should defer to and encourage those programs as appropriate ''other than regulatory'' actions for market transformation. (NEMA, No. 22 at p. 24)

DOE notes that NEMA is a member of the Electric Motors Working Group and jointly commented that DOE should consider that some consumers may select to purchase a synchronous motor and drive combination or a VFD combined with a compliant motor. As noted, DOE analyzed this scenario as a

[70] U.S Department of Energy. United States Industrial Electric Motor Systems Market Opportunities Assessment. 2002.

sensitivity analysis and the reference scenario did not include this potential market shift to synchronous motors and VFD usage.

NEMA commented that legacy induction motors are being replaced by PDS (or power drive systems) consisting of a motor and controls/drives as a means to dramatically reduce power and integrate motor driven systems into sophisticated control schemes that continuously monitor processes managing flow, pressure, etc., to reduce operating costs and emissions. (NEMA, No. 22 at p. 23) As noted by NEMA, advanced technology electric motors that are combined with a drive are now available on the market and could be used in the same applications as the electric motors analyzed in this direct final rule. However, DOE estimates these PDS currently represent a small fraction of the market.[71] Further, NEMA did not provide data to quantitatively estimate the rate at which such PDS would replace legacy induction motors. As such DOE did not include such impact in the reference scenario. Instead, DOE accounted for the potential switch from induction motors to PDS as a sensitivity scenario. See Appendix 8–C and 10–D for more details. In addition, as another sensitivity analysis, DOE also projected shipments in a low growth scenario which assumed lower shipments compared to the reference scenario. See Chapter 9 of the direct final rule for more details.

H. National Impact Analysis

The NIA assesses the national energy savings (''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.[72] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of electric motors 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.

In its analysis, DOE analyzes the energy and economic impacts of a potential standard on all equipment classes aggregated by horsepower range and equipment class group. For NEMA Design A and B electric motors regulated under 10 CFR 431.25, inputs for non-representative equipment classes (*i.e.,* those not analyzed in the engineering, energy-use, and LCC analyses) are scaled using inputs for the analyzed representative equipment classes.[73] For AO–MEMs and electric motors above 500 hp, DOE used the results of the representative units without any scaling due to the smaller size of horsepower ranges associated for each representative unit, and lower shipments of motors at larger horsepower ratings.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV–10 summarizes the inputs and methods DOE used for the NIA analysis for the direct final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the direct final rule TSD for further details.

TABLE IV–10—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: constant trend Standard cases: constant trend.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data (constant trend).
Repair and Maintenance Cost per Unit	Maintenance costs: Do not change with efficiency level. Repair costs: Changes with efficiency level.
Electricity Price	Estimated average and marginal electricity prices from the LCC analysis based on EEI data.
Electricity Price Trends	*AEO2022* projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022*.
Discount Rate	3 percent and 7 percent.
Present Year	2023.

1. Equipment Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.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 equipment classes for the first year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for electric motors over the

[71] DOE estimates the market share of advanced technology motors to be less than 1 percent based on information from OMDIA, Low-Voltage Motors Intelligence Service, Annual 2020 Analysis (OMDIA Report November 2020).

[72] The NIA accounts for impacts in the 50 states and U.S. territories.

[73] For example, results from representative unit 1 (NEMA Design A and B electric motors, 5-horsepower, 4-pole, enclosed) were scaled based by HP and weight to represent all NEMA Design A and B electric motor equipment classes between 1 and 5 horsepower. DOE then used shipments weighted-average results to represent the 1–5 HP range.

entire shipments projection period, similar to what was done in the March 2022 preliminary Analysis, DOE applied a constant trend. The approach is further described in chapter 10 of the direct final rule TSD.

For the standards cases, similar to what was done in the March 2022 preliminary Analysis, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2027). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

To develop standards case efficiency trends after 2027, DOE assumed no change over the forecast period.

DOE did not receive any comments on the projected efficiency trends.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each potential standards case (''TSL'') and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. For example, when a consumer realizes that a more-efficient electric motor used for cooling will lower the electricity bill, that person may opt for increased comfort in the building by using the equipment more, thereby negating a portion of the energy savings. In commercial buildings, however, the person owning the equipment (*i.e.,* the building owner) is usually not the person operating the equipment (*i.e.,* the renter). Because the operator usually does not own the equipment, that person will not have the operating cost information necessary to influence their operation of the equipment. Therefore, DOE believes that a rebound effect is unlikely to occur in commercial buildings. In the industrial and agricultural sectors, DOE believes that electric motors are likely to be operated whenever needed for the required process or service, so a rebound effect is also unlikely to occur in the industrial and agricultural sectors.

In addition, electric motors are components of larger equipment or systems and DOE has determined that a change in motor efficiency alone would not increase the utilization of that equipment or system. DOE did not find any data on the rebound effect specific to electric motors and did not receive any comments supporting the inclusion of a rebound effect for electric motors. DOE did not apply a rebound effect for electric motors.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [74] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the direct final rule TSD.

[74] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2018,* DOE/EIA–0581(2018), April 2019. Available at *www.eia.gov/outlooks/aeo/nems/documentation/* (last accessed July 26, 2022).

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 equipment price trends based on historical PPI data. DOE applied the same trends (*i.e.,* constant price trend) to project prices for each equipment class at each considered efficiency level.

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 electric motors. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case and (2) a low price decline case based on historical PPI data. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10–C of the direct final rule TSD.

The operating cost savings are electricity cost savings and any changes in repair costs, which are calculated using the estimated energy savings in each year and the projected electricity price as well as using the lifetime repair costs estimates from the LCC. To estimate electricity prices in future years, in each sector (commercial, industrial and agriculture), DOE multiplied the sector-specific average electricity prices by the projection of annual national-average electricity price changes in the Reference case from *AEO2022,* which has an end year of 2050. To estimate price trends after 2050, DOE used the 2050 electricity prices, held constant. DOE then used a weighted-average trend across all sectors in the NIA. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2022* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the direct final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this direct final rule, 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.[75] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this direct final rule, DOE analyzed the impacts of the considered standard levels on one subgroup: small businesses.

DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on this subgroup. Chapter 11 in the direct final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new and amended energy conservation standards on manufacturers of electric motors and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new and amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (''TSLs''). To capture the uncertainty relating to manufacturer pricing strategies following new and amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the direct final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the electric motors manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. This included a top-down analysis of electric motors 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 electric motors manufacturing industry, including company filings of form 10–K from the SEC,[76] corporate annual reports, the U.S. Census Bureau's ''*Economic Census*,'' [77] and reports from D&B Hoover.[78]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of electric motors 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 new and amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such

[75] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *georgewbush-whitehouse.archives.gov/omb/memoranda/m03-21.html* (last accessed July 26, 2022).

[76] *www.sec.gov/edgar.*

[77] *www.census.gov/programs-surveys/asm/data/tables.html.*

[78] *app.avention.com.*

manufacturer subgroups may include small business manufacturers, low-volume manufacturers (''LVMs''), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B, ''Review under the Regulatory Flexibility Act'' and in chapter 12 of the direct final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new and amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from new and amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the base year of the analysis) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of electric motors, DOE used a real discount rate of 9.1 percent, which was used in the May 2014 Final Rule and then asked for feedback on this value during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new and amended energy conservation standards on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information gathered from industry stakeholders during the course of manufacturer interviews and subsequent Working Group meetings. The GRIM results are presented in section V.B.2. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the direct final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of the covered equipment can affect the revenues, gross margins, and cash flow of the industry.

DOE conducted the engineering analysis using a combination of physical teardowns and software modeling. DOE contracted a professional motor laboratory to disassemble various electric motors and record what types of materials were present and how much of each material was present, recorded in a final bill of materials (''BOM''). To supplement the physical teardowns, software modeling by a subject matter expert (''SME'') was also used to generate BOMs for select efficiency levels of directly analyzed representative units.

For a complete description of the MPCs, see chapter 5 of the direct final rule TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2023 (the base year) to 2056 (the end year of the analysis period). See chapter 9 of the direct final rule TSD for additional details.

c. Product and Capital Conversion Costs

New and amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make equipment designs comply with new amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant equipment designs can be fabricated and assembled.

DOE calculated the product and capital conversion costs using bottom-up approach based on feedback from manufacturers during manufacturer interviews. During manufacturer interviews, DOE asked manufacturers questions regarding the estimated product and capital conversion costs needed to produce electric motors within an equipment class at each specific EL. DOE used the feedback provided from manufacturers to estimate the approximate amount of engineering time, testing costs and capital equipment that would be purchased to redesign a single frame size to each EL. Some of the types of capital conversion costs manufacturers identified were the purchase of lamination die sets, winding machines, frame casts, and assembly equipment as well as other retooling costs. The two main types of product conversion costs manufacturers shared with DOE during interviews were number of engineer hours necessary to re-engineer frames to meet higher efficiency standards and the testing costs to comply with higher efficiency standards.

DOE then took average values (*i.e.,* costs or number of hours) based on the range of responses given by manufacturers for each product and capital conversion costs necessary for a manufacturer to increase the efficiency of one frame size to a specific EL. DOE multiplied the conversion costs associated with manufacturing a single frame size at each EL by the number of frames each interviewed manufacturer produces. DOE finally scaled this number based on the market share of the manufacturers DOE interviewed, to arrive at industry wide bottom-up product and capital conversion cost estimates for each representative unit at each EL.

In response to the May 2020 Early Assessment Review RFI, NEMA stated that if DOE decides to pursue revision of energy conservation standards for electric motors, DOE should revisit its analyses and assumptions for the product and capital conversion costs used in the May 2014 Final Rule. (NEMA, No. 4 at p. 3) Additionally, in response to the March 2022 Preliminary Analysis EASA agreed with NEMA's comment that DOE should revise the analyses for product and capital conversion costs (EASA, No. 21 at p. 5) After the publication of the March 2022 Preliminary Analysis, DOE interviewed manufacturers to gather information regarding the product and capital conversion costs used in this NOPR analysis. DOE relied on the information gathered during these manufacturer interviews to create the product and

capital conversion cost estimated used in this direct final rule analysis.

In general, DOE assumes all conversion-related investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the new and amended standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the direct final rule TSD.

d. Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markup multipliers to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these markup multipliers the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new and amended energy conservation standards: (1) a preservation of gross margin scenario; and (2) a preservation of operating profit markup scenario. These scenarios lead to different markup multipliers that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin scenario, DOE applied a single uniform ''gross margin percentage'' across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within an equipment class. In this manufacturer markup scenario, electric motor manufacturers fully pass on any additional MPC increase due to standards to their consumers. DOE used a manufacturer markup of 1.37 for all electric motors covered by this rulemaking with less than or equal to 5 hp, and a manufacturer markup or 1.45 for all electric motors covered by this rulemaking greater than 5 hp. DOE used these same manufacturer markups for all TSLs in the preservation of gross margin scenario. This manufacturer markup scenario represents the upper-bound of manufacturer INPV and is the manufacturer markup scenario used to calculate the economic impacts on consumers.

Under the preservation of operating profit scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in MPCs. Under this scenario, as MPCs increase, manufacturers reduce the manufacturer margins to maintain a cost competitive offering in the market. However, in this scenario manufacturers maintain their total operating profit in absolute dollars in the standards case, despite higher product costs and investment. Therefore, gross margin (as a percentage) shrinks in the standards cases. This manufacturer markup scenario represents the lower-bound to industry profitability under new and amended energy conservation standards.

A comparison of industry financial impacts under the two markup scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE conducted additional interviews with manufacturers following the publication of the March 2022 Prelim TSD in preparation for this NOPR analysis. 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 anew and amended standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (''NDAs''), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

During these interviews, most manufacturers stated that even manufacturing a single electric motor to an efficiency level above IE 4 (or IE 4 equivalent efficiency levels) would require a significant level of investments. Further, most manufacturers also stated that it would be impossible to manufacturer a complete line of electric motors spanning all horsepower covered by this rulemaking regardless of the costs associated with this task. Increasing the efficiency of any electric motor to an efficiency level above IE 4 would require each manufacturer to make a significant capital investment to retool their entire production line. It would also require manufacturers to completely redesign almost every electric motor configuration offered, which could take more than a decade of engineering time.

DOE examines a range of efficiency levels for covered equipment when determining whether to amend or establish energy conservation standards, including the level that represents the most energy-efficient combination of design options. In this analysis for NEMA Design A and B electric motors between 1 and 500 hp, EL 1 is associated with an IE 4 equivalent efficiency level and EL 2, EL 3, and EL 4 (max-tech) represent efficiency levels above IE 4. DOE understands the level of burden placed on electric motor manufacturers if energy conservation standards require any electric motors to meet energy conservation standards set above IE 4 equivalent levels. These investments (in the form of conversion costs) are accounted for in the MIA and displayed in section V.B.2.a.

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 in emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the direct final rule TSD. The analysis presented in this notice uses projections from *AEO2022.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (EPA).[79]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive''

[79] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the direct final rule TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2022* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2022,* including the emissions control programs discussed in the following paragraphs.[80]

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.[81] *AEO2022* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for states subject to SO_2 emissions limits under CSAPR, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. In order to continue operating, coal 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 will generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2022.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. Depending on the configuration of the power sector in the different regions and the need for allowances, however, NO_X emissions might not remain at the limit in the case of lower electricity demand. That would mean that standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2022* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2022,* which incorporates the MATS.

NEMA commented that DOE does not adequately examine or account for the significant impacts from ever-increasing investment in and use of renewable energy sources and associated decrease in emissions. (NEMA, No. 22 at p. 25)

DOE acknowledges that increasing use of renewable electricity sources could reduce CO_2 emissions and likely other emissions from the power sector faster than could have been expected when *AEO2022* was prepared. Nevertheless, DOE has used *AEO2022* for the purposes of quantifying emissions as DOE believes it continues to be the most appropriate projection at this time for such purposes.

L. Monetizing Emissions Impacts

As part of the development of this direct final 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 direct final rule.

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). 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).

[80] For further information, see the Assumptions to AEO2022 report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed June 22, 2022).

[81] 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).

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 direct final rule in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately adopted 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.*[82] 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).[83] 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'' (Executive Order (''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 direct final rule. 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

[82] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH_4 and N_2O mitigation benefits consistent with the U.S. Government's $SC–CO_2$ estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[83] 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.

the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this direct final 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,[84] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3% and 7% 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% 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

[84] 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.*

each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[85] 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 final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–GHG (*i.e.,* SC–CO_2, SC–N_2O, and SC–CH_4) values used for this direct final rule are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these pollutants are presented in section V.B.6 of this document.

NEMA disagrees with DOE's approach for estimating monetary benefits associated with emissions reductions. NEMA commented that this topic is too convoluted and subjective to be included in a rulemaking analysis for electric motor standards.(NEMA, No. 22 at p. 25)

As previously stated, as part of the development of this direct final 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.

a. Social Cost of Carbon

The SC–CO_2 values used for this direct final rule were generated using the values presented in the 2021 update from the IWG's February 2021 TSD. Table IV–11 shows the updated sets of SC–CO_2 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 14–A of the direct final rule 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.[86]

TABLE IV–11—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton CO_2]

Year	Discount rate			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2020$.[87] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE expects additional climate benefits to accrue for any longer-life electric motors after 2070, but a lack of available SC–CO_2 estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

[85] 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/*.

[86] 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.

[87] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *www.epa.gov/system/files/documents/2021-12/420r21028.pdf* (last accessed January 13, 2022).

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this direct final rule were based on the values developed for in the February 2021 TSD. Table IV–12 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 14–A of the direct final rule 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.

TABLE IV–12—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th percentile	5% Average	3% Average	2.5% Average	3% 95th percentile
2020	670	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For the direct final rule, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using benefit per ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[88] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025 and 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 range; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for electric motors using a method described in appendix 14B of the direct final rule TSD.

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2022*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2022* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters [13] and [15] of the direct final rule 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 standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic

[88] *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.*

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.[89] 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 direct final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[90] 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.

NEMA commented that the proposed approach for assessing national employment impacts appears to be sufficient. (NEMA, No. 22 at p. 25)

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2031), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the direct final rule 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 electric motors. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for electric motors, and the standards levels that DOE is proposing to adopt in this direct final rule. Additional details regarding DOE's analyses are contained in the direct final rule 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 equipment classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this direct final rule, DOE analyzed the benefits and burdens of four TSLs for electric motors. DOE developed TSLs that combine efficiency levels for each analyzed equipment class group by horsepower range. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the direct final rule TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for electric motors. Table V.2 presents the corresponding description of the levels.

TSL 4 represents the maximum technologically feasible (''max-tech'') energy efficiency for all equipment class groups and is constructed with the same efficiency level for all equipment class groups (*i.e.,* EL 4). (See Table IV–6 in section IV.C.1.c for a breakdown of ELs 1–4 for each ECG).

TSL 3 represents a level corresponding to the IE4 level for each equipment class group (*i.e.,* the industry standard efficiency classification above NEMA Premium/I3), except for AO–polyphase specialized frame size electric motors, where it corresponds to a lower level of efficiency (*i.e.,* NEMA Premium/I3 level) due to the physical limitation of these electric motors.

TSL 2 represents the levels recommended by the November 2022 Joint Recommendation. For currently regulated electric motors (*i.e.,* MEM, 1–500 hp, NEMA Design A and B motors), this TSL represents no changes in the current standard (*i.e.,* NEMA Premium/IE3 level, EL0), except for currently regulated motors in the 100 to 250 hp range where TSL 2 is set at an EL corresponding to the IE4 level (*i.e.,* the industry standard efficiency classification above NEMA Premium/IE3, EL1).[91] At TSL 2, MEM 501–750 hp, NEMA Design A and B electric motors are set at the NEMA Premium level (EL1). For AO–MEM standard frame size, TSL 2 is similarly constructed using the efficiency levels corresponding to the NEMA Premium/IE3 level (EL1), except in the 100 to 250 hp range of AO–MEM standard frame size motors, where it is equivalent to the IE4 level (EL2). For AO–polyphase specialized frame electric motors, TSL 2 represents the fire pump electric motor level (EL1), which is the industry standard efficiency classification approximately two bands below NEMA Premium/IE3.

TSL1 represents a level below the recommended level. TSL1 represents a level where the currently non-regulated electric motors would be subject to the same standards as currently regulated motors (*i.e.,* NEMA Premium level), except for AO–polyphase specialized frame size electric motors, where it corresponds to a lower level of efficiency (*i.e.,* fire pump electric motor level) due to the physical limitation of these electric motors. For currently regulated electric motors (*i.e.,* MEM, 1–500 hp, NEMA Design A and B motors), this TSL would represent no changes in the current standard.

[89] 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 September 30, 2022).

[90] 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.

[91] As noted, this TSL would harmonize with the current European energy conservation standards (compliance date July, 2023). See *eur-lex.europa.eu/eli/reg/2019/1781/oj.*

TABLE V.1—TRIAL STANDARD LEVELS FOR ELECTRIC MOTORS

Equipment class group	Horsepower range	Trial standard level			
		1	2	3	4
		Efficiency level			
MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	0	0	1	4
	5 < hp ≤ 20	0	0	1	4
	20 < hp ≤ 50	0	0	1	4
	50 < hp <100	0	0	1	4
	100 ≤ hp ≤ 250	0	1	1	4
	250 < hp ≤ 500	0	0	1	4
MEM, 501–750 hp, NEMA Design A and B	500 < hp ≤ 750	1	1	2	4
AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	1	1	2	4
	20 < hp ≤ 50	1	1	2	4
	50 < hp < 100	1	1	2	4
	100 ≤ hp ≤ 250	1	2	2	4
AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	1	1	2	4

TABLE V.2—DESCRIPTION OF TRIAL STANDARD LEVELS FOR ELECTRIC MOTORS

ECG	Horsepower range	Trial standard level			
		1	2	3	4
		Efficiency level description			
		NEMA premium *	Recommended	IE4 *	Max-tech
MEM, 1–500 hp, NEMA Design A and B.	1 ≤ hp ≤ 5	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	5 < hp ≤ 20	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	20 < hp ≤ 50	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	50 < hp <100	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	100 ≤ hp ≤ 250	Premium/IE3	Super Premium/IE4	Super Premium/IE4	Max-tech.
	250 < hp ≤ 500	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
MEM, 501–750 hp, NEMA Design A and B.	500 < hp ≤ 750	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
AO–MEM (Standard Frame Size).	1 ≤ hp ≤ 20	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	20 < hp ≤ 50	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	50 < hp < 100	Premium/IE3	Premium/IE3	Super Premium/IE4	Max-tech.
	100 ≤ hp ≤ 250	Premium/IE3	Super Premium/IE4	Super Premium/IE4	Max-tech.
AO–Polyphase (Specialized Frame Size).	1 ≤ hp ≤ 20	Fire pump	Fire pump	Premium/IE3	Max-tech.

* Except for AO–Polyphase (Specialized Frame Size) electric motors where the efficiency level corresponds to a lower efficiency.

DOE constructed the TSLs for this direct final rule 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.[92] In constructing the TSLs, DOE did not consider EL3 because the average LCC savings at EL3 were negative for all representative units, with a majority of consumers experiencing net cost as shown in section V.B.1.a of this document. Similarly, DOE did not consider a TSL with EL2 for the MEM, 1–500 hp, NEMA Design A and B electric motors because the average LCC savings at EL 2 were negative for each of the representative units analyzed, with a majority of consumers experiencing net cost as shown in section V.B.1.a of this document.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on electric motors consumers by looking at the effects that new and amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter [8] of the direct final rule TSD provides detailed information on the LCC and PBP analyses.

[92] Efficiency levels that were analyzed for this final rule are discussed in section IV.C of this document. Results by efficiency level are presented in TSD chapter 8.

As described in Table IV–4 of this document, the analysis focuses on 11 representative units identified in the engineering analysis. Table V–3 through Table V–24 show the LCC and PBP results for the TSLs considered for each representative unit. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V–3—AVERAGE LCC AND PBP RESULTS FOR MEM, NEMA DESIGN A AND B; 5 hp, 4 POLES, ENCLOSED

[RU1]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–2	Baseline	1,185.5	789.9	5,754.2	6,939.6	.....	12.6
3	EL1	1,356.8	779.7	5,684.8	7,041.6	16.7	12.6
	EL2 *	1,356.8	779.7	5,684.8	7,041.6	16.7	12.6
	EL3	1,408.0	773.7	5,643.8	7,051.8	13.7	12.6
4	EL4	1,620.1	768.5	5,616.7	7,236.8	20.3	12.6

* EL1 = EL2.

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEM, NEMA DESIGN A AND B; 5 hp, 4 POLES, ENCLOSED

[RU1]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings ** (2021$)	Percent of consumers that experience net cost
1–2	Baseline	N/A	N/A
3	EL1	−101.8	64.1
	EL2 *	−101.8	64.1
	EL3	−92.3	76.4
4	EL4	−276.4	95.9

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.

* EL1 = EL2.

** The savings represent the average LCC for affected consumers.

TABLE V–5—AVERAGE LCC AND PBP RESULTS FOR MEM, NEMA DESIGN A AND B; 30 hp, 4 POLES, ENCLOSED

[RU2]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–2	Baseline	3,274.2	4,568.5	37,700.8	40,975.0	.....	14.1
3	EL1	3,964.7	4,523.7	37,347.1	41,311.9	15.4	14.1
	EL2 *	3,964.7	4,523.7	37,347.1	41,311.9	15.4	14.1
	EL3	4,175.1	4,502.3	37,174.6	41,349.7	13.6	14.1
4	EL4	4,277.2	4,484.2	37,026.9	41,304.1	11.9	14.1

* EL1 = EL2.

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEM, NEMA DESIGN A AND B; 30 hp, 4 POLES, ENCLOSED

[RU2]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings ** (2021$)	Percent of consumers that experience net cost
1–2	Baseline	N/A	N/A
3	EL1	−336.9	82.2
	EL2 *	−336.9	82.2
	EL3	−356.9	81.1
4	EL4	−309.4	75.0

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* EL1 = EL2.
** The savings represent the average LCC for affected consumers.

TABLE V–7—AVERAGE LCC AND PBP RESULTS FOR MEM, NEMA DESIGN A AND B; 75 hp, 4 POLES, ENCLOSED

[RU3]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–2	Baseline	8,046.4	10,021.1	83,400.1	91,446.5	.....	14.2
3	EL1	9,288.2	9,979.9	83,074.6	92,362.8	30.2	14.2
	EL2	9,811.9	9,956.1	82,879.4	92,691.3	27.2	14.2
	EL3	10,177.1	9,925.6	82,631.4	92,808.5	22.3	14.2
4	EL4	10,636.4	9,895.3	82,386.0	93,022.4	20.6	14.2

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEM, NEMA DESIGN A AND B; 75 hp, 4 POLES, ENCLOSED

[RU3]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1–2	Baseline	N/A	N/A
3	EL1	−916.7	88.4
	EL2	−1,229.6	86.0
	EL3	−1,258.0	89.0
4	EL4	−1,439.6	90.5

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* The savings represent the average LCC for affected consumers.

TABLE V–9—AVERAGE LCC AND PBP RESULTS FOR MEM, NEMA DESIGN A AND B; 150 hp, 4 POLES, ENCLOSED

[RU4]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Baseline	13,066.4	20,576.9	243,710.9	256,777.2	.....	33.4
2–3	EL1	13,414.0	20,492.3	242,797.2	256,211.3	4.1	33.4
	EL2	15,941.3	20,467.3	243,214.8	259,156.1	26.2	33.4
	EL3	16,547.4	20,404.6	242,661.3	259,208.7	20.2	33.4
4	EL4	17,308.4	20,342.2	242,143.9	259,452.3	18.1	33.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEM, NEMA DESIGN A AND B; 150 hp, 4 POLES, ENCLOSED

[RU4]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1	Baseline	N/A	N/A
2–3	EL1	567.1	20.2
	EL2	−2,424.3	90.1
	EL3	−2,314.5	90.3
4	EL4	−2,541.1	89.1

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* The savings represent the average LCC for affected consumers.

TABLE V–11—AVERAGE LCC AND PBP RESULTS FOR MEM, NEMA DESIGN A AND B; 350 hp, 4 POLES, ENCLOSED

[RU5]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–2	Baseline	26,409.6	47,899.8	563,544.0	589,953.6	.....	33.4
3	EL1	29,815.6	47,610.1	561,091.1	590,906.6	11.8	33.4
	EL2*	29,815.6	47,610.1	561,091.1	590,906.6	11.8	33.4
	EL3	33,572.3	47,548.0	561,385.2	594,957.5	20.4	33.4
4	EL4	35,153.9	47,405.2	560,142.3	595,296.2	17.7	33.4

* EL1 = EL2.
Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEM, NEMA DESIGN A AND B; 350 hp, 4 POLES, ENCLOSED

[RU5]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings** (2021$)	Percent of consumers that experience net cost
1–2	Baseline	N/A	N/A
3	EL1	−945.5	66.9
	EL2*	−945.5	66.9
	EL3	−4,918.5	92.4
4	EL4	−5,257.2	89.0

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* EL1 = EL2.
** The savings represent the average LCC for affected consumers.

TABLE V–13—AVERAGE LCC AND PBP RESULTS FOR MEM, NEMA DESIGN A AND B; 600 hp, 4 POLES, ENCLOSED

[RU6]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	40,229.5	83,393.4	980,309.1	1,020,538.6	.....	33.5
1–2	EL1	41,466.0	83,054.7	976,644.0	1,018,109.9	3.7	33.5
3	EL2	46,889.6	82,698.8	973,798.2	1,020,687.7	9.6	33.5
	EL3*	46,889.6	82,698.8	973,798.2	1,020,687.7	9.6	33.5
4	EL4	55,293.3	82,201.3	970,160.6	1,025,454.0	12.6	33.5

* EL2 = EL3.
Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–14—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEM, NEMA DESIGN A AND B; 600 hp, 4 POLES, ENCLOSED

[RU6]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings** (2021$)	Percent of consumers that experience net cost
	Baseline		
1–2	EL1	2,550.1	2.1
3	EL2	−2,287.8	58.3
	EL3*	−2,287.8	58.3
4	EL4	−6,710.3	83.2

*EL2 = EL3.
**The savings represent the average LCC for affected consumers.

TABLE V–15—AVERAGE LCC AND PBP RESULTS FOR AO MEM (STANDARD FRAME SIZE); 5 hp, 4 POLES, ENCLOSED

[RU7]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,126.0	992.2	6,734.4	7,860.4		11.8
1–2	EL1	1,214.2	970.4	6,589.4	7,803.6	4.0	11.8
3	EL2	1,331.6	960.7	6,531.3	7,862.8	6.5	11.8
	EL3	1,331.6	960.7	6,531.3	7,862.8	6.5	11.8
4	EL4	1,525.2	947.7	6,455.8	7,981.0	9.0	11.8

*EL3 = EL2.
Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR AO MEM (STANDARD FRAME SIZE); 5 hp, 4 POLES, ENCLOSED

[RU7]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings** (2021$)	Percent of consumers that experience net cost
	Baseline		
1–2	EL1	57.6	10.3
3	EL2	−39.2	62.9
	EL3*	−39.2	62.9
4	EL4	−156.5	80.7

*EL2 = EL3.
**The savings represent the average LCC for affected consumers.

TABLE V–17—AVERAGE LCC AND PBP RESULTS FOR AO MEM (STANDARD FRAME SIZE); 30 hp, 4 POLES, ENCLOSED

[RU8]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	3,186.7	5,553.3	44,668.1	47,854.8		13.7
1–2	EL1	3,302.6	5,482.2	44,098.8	47,401.4	1.6	13.7
3	EL2	3,925.6	5,428.3	43,681.1	47,606.7	5.9	13.7
	EL3*	3,925.6	5,428.3	43,681.1	47,606.7	5.9	13.7
4	EL4	4,214.4	5,384.7	43,337.1	47,551.4	6.1	13.7

*EL3 = EL2.
Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–18—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR AO MEM (STANDARD FRAME SIZE); 30 hp, 4 POLES, ENCLOSED

[RU8]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings** (2021$)	Percent of consumers that experience net cost
	Baseline	.....	.....
1–2	EL1	472.4	0.9
3	EL2	−160.8	73.9
	EL3*	−160.8	73.9
4	EL4	−105.5	64.5

*EL2 = EL3.
**The savings represent the average LCC for affected consumers.

TABLE V–19—AVERAGE LCC AND PBP RESULTS FOR AO MEM (STANDARD FRAME SIZE); 75 hp, 4 POLES, ENCLOSED

[RU9]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	6,905.6	13,470.2	104,380.5	111,286.0	.....	13.3
1–2	EL1	7,850.5	13,291.7	103,149.1	110,999.7	5.3	13.3
3	EL2	8,995.7	13,237.8	102,934.5	111,930.2	9.0	13.3
	EL3	9,505.8	13,227.0	102,934.8	112,440.6	10.7	13.3
4	EL4	10,331.4	13,147.4	102,463.3	112,794.6	10.6	13.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–20—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR AO MEM (STANDARD FRAME SIZE); 75 hp, 4 POLES, ENCLOSED

[RU9]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings** (2021$)	Percent of consumers that experience net cost
	Baseline	.....	.....
1–2	EL1*	.....	.....
3	EL2	−930.5	99.9
	EL3	−1,441.0	98.4
4	EL4	−1,795.0	96.4

*No savings at EL1 as there are no shipments at the baseline for RU9. See Table IV–9 of this document.
**The savings represent the average LCC for affected consumers.

TABLE V–21—AVERAGE LCC AND PBP RESULTS FOR AO MEM (STANDARD FRAME SIZE); 150 hp, 4 POLES, ENCLOSED

[RU10]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	11,557.8	26,565.2	296,595.2	308,153.0	.....	31.4
1	EL1	12,862.9	26,349.5	294,637.7	307,500.7	6.1	31.4
2–3	EL2	13,119.9	26,243.0	293,559.4	306,679.3	4.9	31.4
	EL3*	15,651.8	26,253.2	294,598.5	310,250.3	13.1	31.4
4	EL4	16,290.6	26,095.5	293,085.9	309,376.5	10.1	31.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.
*At EL3, for RU10, the increase in motor speed compared to the baseline is greater than the increase in motor speed at EL2 compared to the baseline (see section IV.C.1.c of this document). The additional energy use due to the increase in motor speed at EL3 results in lower energy savings and higher operating costs at EL3 compared to EL2. See section IV.E.4 of this document for a detailed explanation of the impact of speed.

TABLE V–22—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR AO MEM (STANDARD FRAME SIZE); 150 hp, 4 POLES, ENCLOSED

[RU10]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
	Baseline	.....	.....
1	EL1	608.8	6.3
2–3	EL2	930.7	11.7
	EL3	−2,720.3	93.7
4	EL4	−1,846.6	79.0

*The savings represent the average LCC for affected consumers.

TABLE V–23—AVERAGE LCC AND PBP RESULTS FOR POLYPHASE (SPECIALIZED FRAME SIZE); 5 hp, 4 POLES, ENCLOSED

[RU11]

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average Lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,134.3	993.4	6,899.6	8,033.9	.....	11.9
1–2	EL1	1,225.1	971.1	6,758.9	7,984.0	4.1	11.9
3	EL2	1,342.9	956.1	6,688.5	8,031.3	5.6	11.9
	EL3	1,539.1	942.1	6,648.0	8,187.0	7.9	11.9
4	EL4*	1,539.1	942.1	6,648.0	8,187.0	7.9	11.9

*EL3 = EL4.

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–24—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR AO–POLYPHASE (SPECIALIZED FRAME SIZE); 5 hp, 4 POLES, ENCLOSED

[RU11]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
	Baseline	.....	.....
1–2	EL1	49.9	32.1
3	EL2	2.5	53.4
	EL3	−153.2	74.5
4	EL4*	−153.2	74.5

*EL3 = EL4.

**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 small businesses. Table V–25 compares the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for electric motors. For the subgroup analysis, the only input change to the LCC calculation is the discount rate applied. Therefore, the simple paybacks remain identical for small businesses compared to the whole sample. In all cases, the average LCC savings and PBP for small businesses at the considered efficiency levels are reduced compared to the average for all consumers. Chapter 11 of the direct final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V–25—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESS CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	EL	Average LCC savings * (2021$)		Simple payback (years)	
		Small businesses	All businesses	Small businesses	All businesses
MEM, NEMA Design A and B; 5 hp, 4 poles, enclosed (RU1)					
1–2	0	N/A	N/A	N/A	N/A
3	1	−108.5	−101.8	16.7	16.7
	2	−108.5	−101.8	16.7	16.7
	3	−101.7	−92.3	13.3	13.3
4	4	−288.0	−276.4	20.7	20.7
MEM, NEMA Design A and B; 30 hp, 4 poles, enclosed (RU2)					
1–2	0	N/A	N/A	N/A	N/A
3	1	−376.7	−336.9	15.4	15.4
	2	−376.7	−336.9	15.4	15.4
	3	−414.2	−356.9	13.6	13.6
4	4	−383.3	−309.4	11.8	11.8
MEM, NEMA Design A and B; 75 hp, 4 poles, enclosed (RU3)					
1–2	0	N/A	N/A	N/A	N/A
3	1	−954.2	−916.7	30.3	30.3
	2	−1,290.1	−1229.6	27.1	27.1
	3	−1,342.9	−1258.0	22.0	22.0
4	4	−1,550.9	−1439.6	20.3	20.3
MEM, NEMA Design A and B; 150 hp, 4 poles, enclosed (RU4)					
1	0	N/A	N/A	N/A	N/A
2–3	1	398.4	567.1	4.1	4.1
	2	−2,471.1	−2424.3	27.6	27.6
	3	−2,454.5	−2314.5	20.5	20.5
4	4	−2,768.0	−2541.1	18.2	18.2
MEM, NEMA Design A and B; 350 hp, 4 poles, enclosed (RU5)					
1–2	0	N/A	N/A	N/A	N/A
3	1	−1,362.7	−945.5	11.7	11.7
	2	−1,362.7	−945.5	11.7	11.7
	3	−5,206.4	−4918.5	20.9	20.9
4	4	−5,758.3	−5257.2	17.9	17.9
MEM, NEMA Design A and B; 600 hp, 4 poles, enclosed (RU6)					
	0	.....	.....	.....	.....
1–2	1	1,865.7	2550.1	3.6	3.6
3	2	−2,854.2	−2287.8	14.1	14.1
	3	−2,854.2	−2287.8	14.1	14.1
4	4	−7,771.5	−6710.3	15.8	15.8
AO–MEM (Standard Frame Size); 5 hp, 4 poles, enclosed (RU7)					
	0	.....	.....	.....	.....
1–2	1	44.1	57.6	4.0	4.0
3	2	−49.0	−39.2	8.6	8.6
	3	−49.0	−39.2	8.6	8.6
4	4	−172.7	−156.5	11.4	11.4
AO–MEM (Standard Frame Size); 30 hp, 4 poles, enclosed (RU8)					
	0	.....	.....	.....	.....
1–2	1	407.9	472.4	1.6	1.6
3	2	−213.1	−160.8	10.4	10.4
	3	−213.1	−160.8	10.4	10.4
4	4	−196.1	−105.5	8.8	8.8
AO–MEM (Standard Frame Size); 75 hp, 4 poles, enclosed (RU9)					
	0	.....	.....	.....	.....
1–2	*1	.....	.....	.....	.....

TABLE V–25—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESS CONSUMER SUBGROUPS AND ALL CONSUMERS—Continued

TSL	EL	Average LCC savings * (2021$)		Simple payback (years)	
		Small businesses	All businesses	Small businesses	All businesses
3	2	−947.0	−930.5	21.2	21.2
	3	−1,454.5	−1,441.0	25.6	25.6
4	4	−1,854.7	−1795.0	17.2	17.2
AO–MEM (Standard Frame Size); 150 hp, 4 poles, enclosed (RU10)					
	0				
1	1	292.7	608.8	6.1	6.1
2–3	2	691.0	930.7	3.4	3.4
	3	−2,732.4	−2720.3	24.5	24.5
4	4	−2,111.7	−1846.6	13	13
AO–Polyphase (Specialized Frame Size); 5 hp, 4 poles, enclosed (RU11)					
	0				
1–2	1	37.0	49.9	4.1	4.1
3	2	−16.1	2.5	5.6	5.6
	3	−173.9	−153.2	7.9	7.9
4	4	−173.9	−153.2	7.9	7.9

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* No savings at EL1 as there are no shipments at the baseline for RU9. See Table IV–9 of this document.

c. Rebuttable Presumption Payback

As discussed in section III.F.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for electric motors. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V–26 presents the rebuttable-presumption payback periods for the considered TSLs for electric motors. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the direct final rule 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–26—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Representative unit	Rebuttable payback period (years)			
	TSL 1	TSL 2	TSL 3	TSL 4
MEM, NEMA Design A and B; 5 hp, 4 poles, enclosed (RU1)	N/A	N/A	12.6	15.1
MEM, NEMA Design A and B; 30 hp, 4 poles, enclosed (RU2)	N/A	N/A	11.4	8.8
MEM, NEMA Design A and B; 75 hp, 4 poles, enclosed (RU3)	N/A	N/A	21.6	14.9
MEM, NEMA Design A and B; 150 hp, 4 poles, enclosed (RU4)	N/A	3.0	3.0	12.9
MEM, NEMA Design A and B; 350 hp, 4 poles, enclosed (RU5)	N/A	N/A	8.5	12.9
MEM, NEMA Design A and B; 600 hp, 4 poles, enclosed (RU6)	2.7	2.7	6.9	9.2
AO–MEM (Standard Frame Size); 5 hp, 4 poles, enclosed (RU7)	3.1	3.1	5.0	6.9
AO–MEM (Standard Frame Size); 30 hp, 4 poles, enclosed (RU8)	1.2	1.2	4.5	4.6
AO–MEM (Standard Frame Size); 75 hp, 4 poles, enclosed (RU9) *			6.6	7.8
AO–MEM (Standard Frame Size); 150 hp, 4 poles, enclosed (RU10)	4.4	3.5	3.5	7.3
AO–Polyphase (Specialized Frame Size); 5 hp, 4 poles, enclosed (RU11)	3.1	3.1	4.2	5.9

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* No payback at TSL1 and TSL2 (EL1) as there are no shipments at the baseline for RU9. See Table IV–9 of this document.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of electric motors. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the direct final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The

following tables summarize the estimated financial impacts (represented by changes in INPV) of potential new and amended energy conservation standards on manufacturers of electric motors, as well as the conversion costs that DOE estimates manufacturers of electric motors would incur at each TSL.

To evaluate the range of cash flow impacts on the electric motor industry, DOE modeled two manufacturer markup scenarios that correspond to the range of possible market responses to new and amended standards. Each manufacturer markup scenario results in a unique set of cash flows and corresponding INPVs at each TSL.

In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and the standards cases that result from the sum of discounted cash flows from the reference year (2023) through the end of the analysis period (2056). The results also discuss the difference in cash flows between the no-new standards case and the standards cases in the year before the estimated compliance date for new and amended energy conservation standards. This figure represents the size of the required conversion costs relative to the cash flow generated by the electric motor industry in the absence of new and amended energy conservation standards.

To assess the upper (less severe) end of the range of potential impacts on electric motors manufacturers, DOE modeled a preservation of gross margin scenario. This scenario assumes that in the standards cases, electric motor manufacturers will be able to pass along all the higher MPCs required for more efficient equipment to their customers. Specifically, the industry will be able to maintain its average no-new-standards case gross margin (as a percentage of revenue) despite the higher production costs in the standards cases. In general, the larger the MPC increases, the less likely manufacturers are to achieve the cash flow from operations calculated in this scenario because it is less likely that manufacturers will be able to fully markup these larger production cost increases.

To assess the lower (more severe) end of the range of potential impacts on the electric motor manufacturers, DOE modeled a preservation of operating profit scenario. This scenario represents the lower end of the range of impacts on manufacturers because no additional operating profit is earned on the higher MPCs, eroding profit margins as a percentage of total revenue.

TABLE V–27—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC MOTORS—PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	*2021$ millions*	5,023	4,899	4,720	4,681	(3,840)
Change in INPV	*2021$ millions*		(124)	(303)	(342)	(8,863)
	%		(2.5)	(6.0)	(6.8)	(176.4)
Product Conversion Costs	*2021$ millions*		159	296	870	6,285
Capital Conversion Costs	*2021$ millions*		31	173	748	7,231
Total Conversion Costs	*2021$ millions*		190	468	1,618	13,516

TABLE V–28—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC MOTORS—PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	*2021$ millions*	5,023	4,896	4,690	3,659	(6,066)
Change in INPV	*2021$ millions*		(127)	(333)	(1,364)	(11,090)
	%		(2.5)	(6.6)	(27.2)	(220.8)
Product Conversion Costs	*2021$ millions*		159	296	870	6,285
Capital Conversion Costs	*2021$ millions*		31	173	748	7,231
Total Conversion Costs	*2021$ millions*		190	468	1,618	13,516

TSL 1 sets the efficiency level at baseline for all MEM, 1–500 hp, NEMA Design A and B; and at EL 1 for all MEM, 501–750 hp, NEMA Design A and B, for all AO–MEM 1–250 hp (standard frame size), and for all AO–Polyphase 1–20 hp (specialized frame size). At TSL 1, DOE estimates impacts on INPV will range from −$127 million to −$124 million, which represents a change in INPV of approximately −2.5 percent (for both values, when rounded to the nearest tenth of a percent). At TSL 1, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to $272 million, or a drop of 21 percent, compared to the no-new-standards case value of $343 million in 2026, the year leading up to the compliance date of new and amended energy conservation standards.

In the absence of new or amended energy conservation standards, DOE estimates that all MEM, 1–500 hp, NEMA Design A and B; 90 percent of MEM, 501–750 hp, NEMA Design A and B; 73 percent of the AO–MEM 1–250 hp (standard frame size); and none of the AO–Polyphase 1–20 hp (specialized frame size) shipments will meet or exceed the ELs required at TSL 1 in 2027, the compliance year of new and amended standards.

DOE does not expect manufacturers to incur any product or capital conversion costs for MEM, 1–500 hp, NEMA Design A and B at TSL 1, since standards are set at baseline at TSL 1 for these electric motors. For the rest of the electric motors covered by this rulemaking, DOE estimates that manufacturers will incur approximately $159 million in product conversion costs and approximately $31 million in capital conversion costs. Product conversion costs primarily include engineering time to redesign non-compliance electric motor models and to re-test these newly redesigned models to meet the standards set at TSL 1. Capital conversion costs include the purchase of lamination die sets, winding machines, frame casts, and assembly equipment as well as other

retooling costs for MEM, 501–750 hp, NEMA Design A and B and for all AO–MEM 1–250 hp (standard frame size) and all AO–Polyphase 1–20 hp (specialized frame size) electric motors covered by this rulemaking.

At TSL 1, under the preservation of gross margin scenario, the shipment weighted average MPC increases slightly by approximately 0.1 percent relative to the no-new-standards case MPC. This slight price increase is outweighed by the $190 million in total conversion costs estimated at TSL 1, resulting in slightly negative INPV impacts at TSL 1 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same nominal operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. The slight increase in the shipment weighted average MPC results in a slightly lower average manufacturer margin. This slightly lower average manufacturer margin and the $190 million in total conversion costs result in slightly negative INPV impacts at TSL 1 under the preservation of operating profit scenario.

TSL 2 sets the efficiency level at baseline for all MEM, 1–99 hp and 251–500 hp, NEMA Design A and B; at EL 1 for all MEM, 100–250 hp and 501–750 hp, NEMA Design A and B, for all AO–MEM 1–99 hp (standard frame size), and for all AO–Polyphase 1–20 hp (specialized frame size); and at EL 2 for all AO–MEM 100–250 hp (standard frame size). At TSL 2, DOE estimates impacts on INPV will range from −$333 million to −$303 million, which represents a change in INPV of approximately −6.6 percent to −6.0 percent, respectively. At TSL 2, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to $160 million, or a drop of 53 percent, compared to the no-new-standards case value of $343 million in 2026, the year leading up to the compliance date of new and amended energy conservation standards.

In the absence of new or amended energy conservation standards, DOE estimates that all MEM, 1–99 hp and 251–500 hp, NEMA Design A and B; 14 percent of all MEM, 100–250 hp, NEMA Design A and B; 90 percent of all MEM, 501–750, NEMA Design A and B; 72 percent of all AO–MEM 1–99 hp (standard frame size); 8 percent of all AO–MEM 100–250 hp (standard frame size); and none of the AO–Polyphase 1–20 hp (specialized frame size) shipments will meet or exceed the ELs required at TSL 2 in 2027, the compliance year of new and amended standards.

DOE does not expect manufacturers to incur any product or capital conversion costs for MEM, 1–99 hp and 250–500 hp, NEMA Design A and B at TSL 2, since standards are set at baseline at TSL 2 for these electric motors. For the rest of the electric motors covered by this rulemaking, DOE estimates that manufacturers will incur approximately $296 million in product conversion costs and approximately $173 million in capital conversion costs. Product conversion costs primarily include engineering time to redesign non-compliance electric motor models and to re-test these newly redesigned models to meet the standards set at TSL 2. Capital conversion costs include the purchase of lamination die sets, winding machines, frame casts, and assembly equipment as well as other retooling costs for MEM, 100–250 hp and 501–750 hp, NEMA Design A and B and for all AO–MEM 1–250 hp (standard frame size) and all AO–Polyphase 1–20 hp (specialized frame size) electric motors covered by this rulemaking.

At TSL 2, under the preservation of gross margin scenario, the shipment weighted average MPC increases slightly by approximately 0.7 percent relative to the no-new-standards case MPC. This slight price increase is outweighed by the $468 million in total conversion costs estimated at TSL 2, resulting in moderately negative INPV impacts at TSL 2 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same nominal operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. The slight increase in the shipment weighted average MPC results in a slightly lower average manufacturer margin. This slightly lower average manufacturer margin and the $468 million in total conversion costs result in moderately negative INPV impacts at TSL 2 under the preservation of operating profit scenario.

TSL 3 sets the efficiency level at EL 1 for all MEM, 1–500 hp, NEMA Design A and B; and at EL 2 for all MEM, 501–750 hp, NEMA Design A and B, for all AO–MEM 1–250 hp (standard frame size), and for all AO–Polyphase 1–20 hp (specialized frame size). At TSL 3, DOE estimates impacts on INPV will range from −$1,364 million to −$342 million, which represents a change in INPV of approximately −27.2 percent to −6.8 percent, respectively. At TSL 3, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to −$303 million, or a drop of 189 percent, compared to the no-new-standards case value of $343 million in 2026, the year leading up to the compliance date of new and amended energy conservation standards.

In the absence of new or amended energy conservation standards, DOE estimates that 14 percent of all MEM, 1–500 hp, NEMA Design A and B; 16 percent of all MEM, 501–750 hp, NEMA Design A and B; 2 percent of all AO–MEM 1–250 hp (standard frame size); and none of the AO–Polyphase 1–20 hp (specialized frame size) shipments will meet or exceed the ELs required at TSL 3 in 2027, the compliance year of new and amended standards.

The majority of electric motors covered by this rulemaking will need to be redesigned at TSL 3. DOE estimates that manufacturers will have to make significant investments in their manufacturing production equipment and the engineering resources dedicated to redesigning electric motor models. DOE estimates that manufacturers will incur approximately $870 million in product conversion costs and approximately $748 million in capital conversion costs.

At TSL 3, under the preservation of gross margin scenario, the shipment weighted average MPC increases significantly by approximately 22.0 percent relative to the no-new-standards case MPC. This price increase is outweighed by the $1,618 million in total conversion costs estimated at TSL 3, resulting in moderately negative INPV impacts at TSL 3 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same nominal operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. The increase in the shipment weighted average MPC results in a significantly lower average manufacturer margin, compared to the no-new-standards case manufacturer margin. This lower average manufacturer margin and the $1,618 million in total conversion costs result in significantly negative INPV impacts at TSL 3 under the preservation of operating profit scenario.

TSL 4 sets the efficiency level at EL 4 (max-tech) for all electric motors covered by this rulemaking. At TSL 4, DOE estimates impacts on INPV will range from −$11,090 million to −$8,863 million, which represents a change in INPV of approximately −220.8 percent to −176.4 percent, respectively. At TSL 4, industry free

cash flow (operating cash flow minus capital expenditures) is estimated to decrease to −$5,634 million, or a drop of 1,745 percent, compared to the no-new-standards case value of $343 million in 2026, the year leading up to the compliance date of new and amended energy conservation standards.

In the absence of new or amended energy conservation standards, DOE estimates that less than 1 percent of all MEM, 1–50 hp, NEMA Design A and B; none of the MEM, 51–750 hp, NEMA Design A and B; none of the AO–MEM 1–250 hp (standard frame size); and none of the AO–Polyphase 1–20 hp (specialized frame size) shipments will meet the ELs required at TSL 4 in 2027, the compliance year of new and amended standards.

Almost all electric motors covered by this rulemaking will need to be redesigned at TSL 4. DOE estimates that manufacturers will have to make significant investments in their manufacturing production equipment and the engineering resources dedicated to redesigning electric motor models. DOE estimates that manufacturers will incur approximately $6,285 million in product conversion costs and approximately $7,231 million in capital conversion costs. The significant increase in product and capital conversion costs is because DOE assumes that electric motor manufacturers will need to use die-cast copper rotors for most, if not all, electric motors manufactured to meet this TSL. This technology requires a significant level of investment because the majority of the existing electric motor production machinery would need to be replaced or significantly modified.

At TSL 4, under the preservation of gross margin scenario, the shipment weighted average MPC increases significantly by approximately 49.5 percent relative to the no-new-standards case MPC. This price increase is significantly outweighed by the $13,516 million in total conversion costs estimated at TSL 4, resulting in significantly negative INPV impacts at TSL 4 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same nominal operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. The increase in the shipment weighted average MPC results in a lower average manufacturer margin, compared to the no-new-standards case manufacturer margin. This lower average manufacturer margin and the $13,516 million in total conversion costs result in significantly negative INPV impacts at TSL 4 under the preservation of operating profit scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of new and amended energy conservation standards on direct employment in the electric motors 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 used statistical data from the U.S. Census Bureau's 2021 Annual Survey of Manufacturers (''ASM''), the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures involved with the manufacturing of electric motors are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time.

In the GRIM, DOE used the labor content of each piece of equipment and the MPCs to estimate the annual labor expenditures of the industry. DOE used Census data and interviews with manufacturers to estimate the portion of the total labor expenditures attributable to domestic labor.

The production worker estimates in this employment section cover only workers up to the line-supervisor level who are directly involved in fabricating and assembling an electric motor within a motor facility. Workers performing services that are closely associated with production operations, such as material handling with a forklift, are also included as production labor. DOE's estimates account for only production workers who manufacture the specific equipment covered by this rulemaking. For example, a worker on an electric motor line manufacturing a fractional horsepower motor (*i.e.,* a motor with less than one horsepower) would not be included with this estimate of the number of electric motor workers, since fractional motors are not covered by this rulemaking.

The employment impacts shown in Table V–29 represent the potential production employment impact resulting from new and amended energy conservation standards. The upper bound of the results estimates the maximum change in the number of production workers that could occur after compliance with new and amended energy conservation standards when assuming that manufacturers continue to produce the same scope of covered equipment in the same production facilities. It also assumes that domestic production does not shift to lower-labor-cost countries. Because there is a real risk of manufacturers evaluating sourcing decisions in response to new and amended energy conservation standards, the lower bound of the employment results includes the estimated total number of U.S. production workers in the industry who could lose their jobs if some existing electric motor production was moved outside of the U.S. While the results present a range of employment impacts following 2027, this section also include qualitative discussions of the likelihood of negative employment impacts at the various TSLs. Finally, the employment impacts shown are independent of the indirect employment impacts from the broader U.S. economy, which are documented in chapter 16 of the direct final rule TSD.

Based on 2021 ASM data and interviews with manufacturers, DOE estimates approximately 15 percent of electric motors covered by this rulemaking sold in the U.S. are manufactured domestically. Using this assumption, DOE estimates that in the absence of new and amended energy conservation standards, there would be approximately 1,242 domestic production workers involved in manufacturing all electric motors covered by this rulemaking in 2027. Table V–29 shows the range of potential impacts of new and amended energy conservation standards on U.S. production workers involved in the production of electric motors covered by this rulemaking.

TABLE V–29—POTENTIAL CHANGES IN THE NUMBER OF DOMESTIC ELECTRIC MOTOR WORKERS

	No-new-standards case	Trial standard level			
		1	2	3	4
Domestic Production Workers in 2027	1,242	1,243	1,250	1,515	1,857

TABLE V–29—POTENTIAL CHANGES IN THE NUMBER OF DOMESTIC ELECTRIC MOTOR WORKERS—Continued

	No-new-standards case	Trial standard level			
		1	2	3	4
Domestic Non-Production Workers in 2027	712	712	712	712	712
Total Domestic Employment in 2027	1,954	1,955	1,962	2,227	2,569
Potential Changes in Total Domestic Employment in 2027*	.....	(2)–1	(13)–8	(432)–273	(1,201)–615

*DOE presents a range of potential impacts. Numbers in parentheses indicate negative values.

At the upper end of the range, all examined TSLs show an increase in the number of domestic production workers for electric motors. The upper end of the range represents a scenario where manufacturers increase production hiring due to the increase in the labor associated with adding the required components and additional labor (*e.g.,* hand winding, etc.) to make electric motors more efficient. However, as previously stated, this assumes that in addition to hiring more production employees, all existing domestic production would remain in the United States and not shift to lower labor-cost countries.

At the lower end of the range, all examined TSLs show a decrease in domestic production employment. In response to the March 2022 Preliminary TSD NEMA stated that increasing component prices can drive production offshore when tariffs only apply to raw materials and not finished goods. (NEMA, No. 22 at p. 16). The lower end of the domestic employment range assumes that some electric motor domestic production employment may shift to lower labor-cost countries in response to energy conservation standards. DOE estimated this lower bound potential change in domestic employment based on the percent change in the MPC at each TSL.

c. Impacts on Manufacturing Capacity

During manufacturer interviews and during meetings supporting the November 2022 Joint Recommendation, most manufacturers stated that any standards requiring efficiency levels higher than IE4 (also referred to as NEMA Super-Premium) [93] would severely disrupt manufacturing capacity (in this analysis these efficiency levels correspond to two or more NEMA bands of efficiency above NEMA Premium). Many electric motor manufacturers do not offer any electric motor models that would meet these higher efficiency levels. Based on the shipments analysis used in the NIA, DOE estimates that less than 1.5 percent of all electric motor shipments will meet any efficiency level above IE4, in the no-new-standards case in 2027, the compliance year of new and amended standards.

Additionally, most manufacturers stated they would not be able to provide a full portfolio of electric motors for any standards that would be met using copper rotors. Most manufacturers stated that they do not currently have the machinery, technology, or engineering resources to produce copper rotors in-house. Some manufacturers claim that the few manufacturers that do have the capability of producing copper rotors are not able to produce these motors in volumes sufficient to fulfill the entire electric motor market and would not be able to ramp up those production volumes over the four-year compliance period. For manufacturers to either completely redesign their motor production lines or significantly expand their very limited copper rotor production line would require a massive retooling and engineering effort, which could take more than a decade to complete. Most manufacturers stated they would have to outsource copper rotor production because they would not be able to modify their facilities and production processes to produce copper rotors in-house within a four-year time period. Most manufacturers agreed that outsourcing rotor die casting would constrain capacity by creating a bottleneck in rotor production, as there are very few companies that produce copper rotors.

Manufacturers also pointed out that there is substantial uncertainty surrounding the global availability and price of copper, which has the potential to constrain capacity. Several manufacturers expressed concern that the combination of all of these factors would make it impossible to support existing customers while redesigning product lines and retooling.

DOE estimates there is a strong likelihood of manufacturer capacity constraints in the near term for any standards that would likely require the use of copper rotors and for any standards set at efficiency levels higher than IE4.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE analyzed the impacts to small businesses in section VI.B and did not identify any other adversely impacted electric motor-related manufacturer subgroups for this rulemaking based on the results of the industry characterization.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis

[93] The TSL that require efficiency levels above IE4/NEMA Super-Premium is TSL 4.

of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of electric motors associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

DOE evaluates product-specific regulations that will take effect approximately 3 years before or after the 2027 compliance date of any new and amended energy conservation standards for electric motors. This information is presented in Table V–30.

TABLE V–30—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING ELECTRIC MOTOR MANUFACTURERS

Federal energy conservation standard	Number of manufacturers *	Number of manufacturers affected from this rule **	Approx. standards year	Industry conversion costs (millions)	Industry conversion costs/product revenue *** (%)
Dedicated-Purpose Pool Pump Motors 87 FR 37122 (Jun. 21, 2022) †.	5	5	2026	$46.2 (2020$)	2.8
Distribution Transformer 88 FR 1722 (Jan. 11, 2023) †.	27	6	2027	$343 (2021$)	2.7

* 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 electric motors that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† Indicates a proposed rulemaking. Final values may change upon the publication of a final rule.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for electric motors, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V–31 presents DOE's projections of the national energy savings for each TSL considered for electric motors. The savings were calculated using the approach described in section IV.H of this document.

TABLE V–31—CUMULATIVE NATIONAL ENERGY SAVINGS FOR ELECTRIC MOTORS; 30 YEARS OF SHIPMENTS

[2027–2056]

Equipment class group	Horsepower range	Trial standard level			
		1	2	3	4
		(quads)			
Primary Energy:					
MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	0.799	1.877
	5 < hp ≤ 20	N/A	N/A	2.303	4.461
	20 < hp ≤ 50	N/A	N/A	2.049	3.968
	50 < hp < 100	N/A	N/A	0.327	1.049
	100 ≤ hp ≤ 250	N/A	2.609	2.609	7.926
	250 < hp ≤ 500	N/A	N/A	1.411	2.497
MEM, 501–750 hp, NEMA Design A and B above 500 hp	500 < hp ≤ 750	0.003	0.003	0.029	0.073
AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.045	0.045	0.104	0.184
	20 < hp ≤ 50	0.012	0.012	0.100	0.171
	50 < hp < 100*	.....	.....	0.018	0.047
	100 ≤hp ≤ 250	0.056	0.207	0.207	0.436
AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.021	0.021	0.036	0.049
Total		0.137	2.898	9.991	22.739
FFC:					
MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	0.830	1.950
	5 < hp ≤ 20	N/A	N/A	2.393	4.635
	20 < hp ≤ 50	N/A	N/A	2.128	4.123
	50 < hp < 100	N/A	N/A	0.339	1.090
	100 ≤ hp ≤ 250	N/A	2.710	2.710	8.234
	250 < hp ≤ 500	N/A	N/A	1.466	2.594
MEM, 501–750 hp, NEMA Design A and B above 500 hp	500 < hp ≤ 750	0.003	0.003	0.031	0.076

TABLE V–31—CUMULATIVE NATIONAL ENERGY SAVINGS FOR ELECTRIC MOTORS; 30 YEARS OF SHIPMENTS—Continued
[2027–2056]

Equipment class group	Horsepower range	Trial standard level			
		1	2	3	4
		(quads)			
AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.047	0.047	0.108	0.192
	20 < hp ≤ 50	0.012	0.012	0.104	0.177
	50 ≤ hp ≤ 100 *	.....	.....	0.018	0.049
	100 ≤ hp ≤ 250 **	0.058	0.215	0.215	0.453
AO–Polyphase (Specialized Frame Size)	1 hp 20	0.022	0.022	0.037	0.051
Total	.....	0.143	3.011	10.379	23.623

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
*No impact at TSL1 and TSL2 because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 in that equipment class group and horsepower range.

OMB Circular A–4 [94] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[95] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to electric motors. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V–32. The impacts are counted over the lifetime of electric motors purchased in 2027–2035.

TABLE V–32—CUMULATIVE NATIONAL ENERGY SAVINGS FOR ELECTRIC MOTORS; 9 YEARS OF SHIPMENTS
[2027–2035]

Equipment class group	Horsepower range	Trial standard level			
		1	2	3	4
		(quads)			
Primary Energy:					
MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	0.182	0.427
	5 < hp ≤ 20	N/A	N/A	0.524	1.016
	20 < hp ≤ 50	N/A	N/A	0.466	0.903
	50 < hp < 100	N/A	N/A	0.074	0.239
	100 ≤ hp ≤ 250	N/A	0.592	0.592	1.799
	250 < hp ≤ 500	N/A	N/A	0.320	0.567
MEM, 501–750 hp, NEMA Design A and B above 500 hp	500 < hp ≤ 750	0.001	0.001	0.007	0.017
AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.012	0.012	0.029	0.051
	20 < hp ≤ 50	0.003	0.003	0.027	0.047
	50 < hp < 100 *	.....	.....	0.005	0.013
	100 ≤ hp ≤ 250	0.015	0.057	0.057	0.119
AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.006	0.006	0.010	0.014
Total	.....	0.038	0.671	2.294	5.211
FFC:					
MEM, 1—500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	0.189	0.444
	5 < hp ≤ 20	N/A	N/A	0.545	1.056
	20 < hp ≤ 50	N/A	N/A	0.485	0.939
	50 < hp < 100	N/A	N/A	0.077	0.248
	100 ≤ hp ≤ 250	N/A	0.615	0.615	1.869
	250 < hp ≤ 500	N/A	N/A	0.333	0.589
MEM, 501–750 hp, NEMA Design A and B above 500 hp	500 < hp ≤ 750	0.001	0.001	0.007	0.017
AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.013	0.013	0.030	0.053
	20 < hp ≤ 50	0.003	0.003	0.028	0.049
	50 < hp < 100 *	.....	.....	0.005	0.013
	100 ≤ hp ≤ 250 **	0.016	0.059	0.059	0.124

[94] 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 September 30, 2022).

[95] 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.

TABLE V–32—CUMULATIVE NATIONAL ENERGY SAVINGS FOR ELECTRIC MOTORS; 9 YEARS OF SHIPMENTS—Continued
[2027–2035]

Equipment class group	Horsepower range	Trial standard level			
		1	2	3	4
		(quads)			
AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.006	0.006	0.010	0.014
Total		0.039	0.698	2.384	5.416

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* No impact at TSL1 and TSL2 because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 (EL1) in that equipment class group and horsepower range.

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 electric motors. In accordance with OMB's guidelines on regulatory analysis,[96] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V–33 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V–33—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR ELECTRIC MOTORS; 30 YEARS OF SHIPMENTS
[2027–2056]

Discount rate	Equipment class group	Horsepower range	Trial standard level			
			1	2	3	4
			(billion 2021$)			
3 percent	MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	−2.18	−8.54
		5 < hp ≤ 20	N/A	N/A	−7.17	−6.21
		20 < hp ≤ 50	N/A	N/A	−3.24	−0.93
		50 < hp < 100	N/A	N/A	−1.36	−1.50
		100 ≤ hp ≤ 250	N/A	6.73	6.73	5.13
		250 < hp ≤ 500	N/A	N/A	1.77	0.66
	MEM, 501–750 hp, NEMA Design A and B above 500 hp.	500 < hp ≤ 750	0.01	0.01	0.02	0.03
	AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.12	0.12	0.05	−0.14
		20 < hp ≤ 50	0.04	0.04	0.04	0.17
		50 < hp < 100*	.....	.....	−0.09	−0.16
		100 ≤ hp ≤ 250	0.11	0.52	0.52	0.18
	AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.05	0.05	0.05	0.01
	Total		0.33	7.47	−4.85	−11.30
7 percent	MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	−1.49	−5.30
		5 < hp ≤ 20	N/A	N/A	−4.77	−5.18
		20 < hp ≤ 50	N/A	N/A	−2.62	−2.25
		50 < hp < 100	N/A	N/A	−0.86	−1.26
		100 ≤ hp ≤ 250	N/A	2.00	2.00	−2.04
		250 < hp ≤ 500	N/A	N/A	0.09	−1.15
	MEM, 501–750 hp, NEMA Design A and B above 500 hp.	500 < hp ≤ 750	0.00	0.00	−0.01	−0.03
	AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.04	0.04	−0.02	−0.16
		20 < hp ≤ 50	0.02	0.02	−0.02	0.01
		50 < hp < 100*	.....	.....	−0.06	−0.11
		100 ≤ hp ≤ 250	0.02	0.16	0.16	−0.18
	AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.02	0.02	0.01	−0.02
	Total		0.11	2.23	−7.60	−17.67

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* No impact at TSL1 and TSL2 because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 in that equipment class group and horsepower range.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V–34. 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

[96] 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 September 30, 2022).

change in DOE's analytical methodology or decision criteria.

TABLE V–34—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR ELECTRIC MOTORS; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate	Equipment class group	Horsepower range	Trial standard level			
			1	2	3	4
			(billion 2021$)			
3 percent	MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	−0.66	−2.62
		5 < hp ≤ 20	N/A	N/A	−2.17	−1.79
		20 < hp ≤ 50	N/A	N/A	−0.95	−0.16
		50 < hp < 100	N/A	N/A	−0.41	−0.43
		100 ≤ hp ≤ 250	N/A	2.16	2.16	1.74
		250 < hp ≤ 500	N/A	N/A	0.58	0.25
	MEM, 501–750 hp, NEMA Design A and B above 500 hp.	500 < hp ≤ 750	0.00	0.00	0.01	0.01
	AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.04	0.04	0.02	−0.04
		20 < hp ≤ 50	0.02	0.02	0.02	0.07
		50 < hp < 100*	.....	.....	−0.03	−0.06
		100 ≤ hp ≤ 250	0.04	0.20	0.20	0.08
	AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.02	0.02	0.02	0.01
	Total	.....	0.12	2.44	−1.22	−2.95
7 percent	MEM, 1–500 hp, NEMA Design A and B	1 ≤ hp ≤ 5	N/A	N/A	−0.64	−2.30
		5 < hp ≤ 20	N/A	N/A	−2.06	−2.20
		20 < hp ≤ 50	N/A	N/A	−1.12	−0.93
		50 < hp < 100	N/A	N/A	−0.37	−0.54
		100 ≤ hp ≤ 250	N/A	0.90	0.90	−0.84
		250 < hp ≤ 500	N/A	N/A	0.05	−0.49
	MEM, 501—750 hp, NEMA Design A and B above 500 hp.	500 < hp ≤ 750	0.00	0.00	0.00	−0.01
	AO–MEM (Standard Frame Size)	1 ≤ hp ≤ 20	0.02	0.02	−0.01	−0.08
		20 < hp ≤ 50	0.01	0.01	−0.01	0.01
		50 < hp < 100	.....	.....	−0.03	−0.05
		100 ≤ hp ≤ 250	0.01	0.08	0.08	−0.08
	AO–Polyphase (Specialized Frame Size)	1 ≤ hp ≤ 20	0.01	0.01	0.01	−0.01
	Total	.....	0.06	1.02	−3.21	−7.51

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.

*No impact at TSL1 and TSL2 because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 in that equipment class group and horsepower range.

The previous results reflect the use of a default trend to estimate the change in price for electric motors over the analysis period (see section IV.F.1 of this document). In addition to the default trend (constant prices), DOE also conducted a sensitivity analysis that considered one scenario with a rate of price decline and one scenario with a rate of price increase. The results of these alternative cases are presented in appendix 10C of the direct final rule TSD. In the price-decline case, the NPV of consumer benefits is higher than in the default case. In the price-increase case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for electric motors would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2027–2031), where these uncertainties are reduced.

The results suggest that the 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 direct final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section IV.C.1.b of this document, DOE concludes that the standards in this direct final rule would not lessen the utility or performance of the electric motors under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e of this document, the Attorney General

determines the impact, if any, of any lessening of competition likely to result from a 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 direct final rule and the accompanying TSD for review. DOE will consider DOJ's comments on the 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 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 direct final rule TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for electric motors is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V–35 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the direct final rule TSD.

TABLE V–35—CUMULATIVE EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056

	Trial standard level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	4.08	84.48	294.36	669.19
CH_4 (*thousand tons*)	0.28	5.73	20.15	45.77
N_2O (*thousand tons*)	0.04	0.79	2.78	6.31
NO_X (*thousand tons*)	1.93	39.32	138.52	314.54
SO_2 (*thousand tons*)	1.68	34.64	121.08	275.16
Hg (*tons*)	0.01	0.23	0.80	1.81
Upstream Emissions				
CO_2 (*million metric tons*)	0.34	7.20	24.88	56.62
CH_4 (*thousand tons*)	32.47	684.37	2,359.60	5,370.22
N_2O (*thousand tons*)	0.00	0.04	0.12	0.28
NO_X (*thousand tons*)	5.20	109.42	377.47	859.03
SO_2 (*thousand tons*)	0.02	0.47	1.67	3.79
Hg (*tons*)	0.00	0.00	0.00	0.01
Total FFC Emissions				
CO_2 (*million metric tons*)	4.42	91.69	319.24	725.80
CH_4 (*thousand tons*)	32.75	690.10	2,379.75	5,415.99
N_2O (*thousand tons*)	0.04	0.82	2.90	6.59
NO_X (*thousand tons*)	7.13	148.74	516.00	1,173.58
SO_2 (*thousand tons*)	1.71	35.12	122.75	278.95
Hg (*tons*)	0.01	0.23	0.80	1.82

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 electric motors. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V–36 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the TSL in chapter 14 of the direct final rule TSD.

TABLE V–36—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(Billion 2021$)			
1	35.69	155.25	243.87	470.82
2	553.79	2,504.21	3,979.48	7,570.82

TABLE V–36—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056—Continued

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(Billion 2021$)			
3	2,455.13	10,830.27	17,081.13	32,809.19
4	5,459.53	24,136.32	38,092.58	73,105.31

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for electric motors. Table V–37 presents the value of the CH_4 emissions reduction at each TSL, and Table V–38 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the TSL in chapter 14 of the direct final rule TSD.

TABLE V–37—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056

TSL	SC–CH_4 case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(Billion 2021$)			
1	12.16	37.03	51.92	97.98
2	194.82	623.71	884.30	1,651.65
3	845.85	2,621.71	3,690.13	6,932.36
4	1,884.39	5,857.68	8,250.30	15,490.67

TABLE V–38—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056

TSL	SC–N_2O case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(Billion 2021$)			
1	0.13	0.51	0.79	1.36
2	1.95	8.23	12.94	21.99
3	8.63	35.54	55.47	94.75
4	19.20	79.21	123.71	211.22

DOE is aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for electric motors. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V–39 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V–40 presents similar results for SO_2 emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the TSL in chapter 14 of the direct final rule TSD.

TABLE V–39—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021$)	
1	251.49	93.31
2	4,333.63	1,321.91
3	17,501.29	6,149.06
4	39,226.69	13,614.34

TABLE V–40—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR ELECTRIC MOTORS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021$)	
1	82.00	31.35
2	1,388.59	434.33
3	5,658.54	2,042.58
4	12,671.52	4,517.89

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 the monetary benefits of the reduction of Hg for this direct final rule because Hg emissions reductions are expected to be 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))

8. Summary of Economic Impacts

Table V–41 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced GHG and NO_X and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered electric motors, and are measured for the lifetime of products shipped in 2027–2056. The benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of electric motors shipped in 2027–2056.

TABLE V–41—CONSUMER NPV COMBINED WITH PRESENT VALUE OF BENEFITS FROM CLIMATE AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4
3% Discount Rate for Consumer NPV and Health Benefits (billion 2021$)				
5% Average SC–GHG case	0.71	13.95	21.62	47.96
3% Average SC–GHG case	0.85	16.33	31.80	70.67
2.5% Average SC–GHG case	0.96	18.07	39.14	87.07
3% 95th percentile SC–GHG case	1.23	22.44	58.15	129.41
7% Discount Rate for Consumer NPV and Health Benefits (billion 2021$)				
5% Average SC–GHG case	0.28	4.74	3.90	7.83
3% Average SC–GHG case	0.43	7.13	14.08	30.54
2.5% Average SC–GHG case	0.53	8.87	21.42	46.93
3% 95th percentile SC–GHG case	0.80	13.24	40.43	89.27

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed in section III.F.1 of this document. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B))

For this direct final rule, DOE considered the impacts of new and amended standards for electric motors at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL,

tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

1. Benefits and Burdens of TSLs Considered for Electric Motors Standards

Tables V–42 and V–43 summarize the quantitative impacts estimated for each TSL for electric motors. The national impacts are measured over the lifetime of electric motors purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is presenting monetized benefits of GHG emissions reductions in accordance with the applicable Executive Orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V–42—SUMMARY OF ANALYTICAL RESULTS FOR ELECTRIC MOTORS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings				
Quads	0.1	3.0	10.4	23.6
Cumulative FFC Emissions Reduction				
CO_2 (*million metric tons*)	4.42	91.69	319.24	725.80
CH_4 (*thousand tons*)	32.75	690.10	2,379.75	5,415.99
N_2O (*thousand tons*)	0.04	0.82	2.90	6.59
NO_X (*thousand tons*)	7.13	148.74	516.00	1,173.58
SO_2 (*thousand tons*)	1.71	35.12	122.75	278.95
Hg (*tons*)	0.01	0.23	0.80	1.82
Present Value of Benefits and Costs (3% discount rate, billion 2021$)				
Consumer Operating Cost Savings	0.51	8.82	34.86	73.26
Climate Benefits *	0.19	3.14	13.49	30.07
Health Benefits **	0.33	5.72	23.16	51.90
Total Benefits †	1.04	17.68	71.50	155.23
Consumer Incremental Product Costs ‡	0.18	1.35	39.70	84.56
Consumer Net Benefits	0.33	7.47	−4.85	−11.30
Total Net Benefits	0.85	16.33	31.80	70.67
Present Value of Benefits and Costs (7% discount rate, billion 2021$)				
Consumer Operating Cost Savings	0.21	2.95	13.44	27.14
Climate Benefits *	0.19	3.14	13.49	30.07
Health Benefits **	0.12	1.76	8.19	18.13
Total Benefits †	0.53	7.85	35.11	75.34
Consumer Incremental Product Costs ‡	0.10	0.72	21.03	44.80
Consumer Net Benefits	0.11	2.23	−7.60	−17.67
Total Net Benefits	0.43	7.13	14.08	30.54

Note: This table presents the costs and benefits associated with electric motors 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, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

TABLE V–43—SUMMARY OF ANALYTICAL RESULTS FOR ELECTRIC MOTORS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Industry NPV (*million 2021$*) (No-new-standards case INPV = 5,023)	4,896–4,899	4,690–4,720	3,659–4,681	(6,066)–(3,840)

TABLE V–43—SUMMARY OF ANALYTICAL RESULTS FOR ELECTRIC MOTORS TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
Industry NPV (*% change*)	(2.5)	(6.6)–(6.0)	(27.2)–(6.8)	(220.8)–(176.4)
Consumer Average LCC Savings (2021$)				
RU1	N/A	N/A	−101.8	−276.4
RU2	N/A	N/A	−336.9	−309.4
RU3	N/A	N/A	−916.7	−1,439.6
RU4	N/A	567.1	567.1	−2,541.1
RU5	N/A	N/A	−945.5	−5,257.2
RU6	2,550.1	2,550.1	−2,287.8	−6,710.3
RU7	57.6	57.6	−39.2	−156.5
RU8	472.4	472.4	−160.8	−105.5
RU9*	.....	.....	−930.5	−1,795.0
RU10	608.8	930.7	930.7	−1,846.6
RU11	49.9	49.9	2.5	−153.2
Shipment-Weighted Average**	159.8	337.4	−196.2	−404.2
Consumer Simple PBP (years)				
RU1	N/A	N/A	16.7	20.3
RU2	N/A	N/A	15.4	11.9
RU3	N/A	N/A	30.2	20.6
RU4	N/A	4.1	4.1	18.1
RU5	N/A	N/A	11.8	17.7
RU6	3.7	3.7	9.6	12.6
RU7	4.0	4.0	6.5	9.0
RU8	1.6	1.6	5.9	6.1
RU9*	.....	.....	9.0	10.6
RU10	6.1	4.9	4.9	10.1
RU11	4.1	4.1	5.6	7.9
Shipment-Weighted Average**	3.8	3.9	15.6	16.3
Percent of Consumers that Experience a Net Cost				
RU1	N/A	N/A	64.1%	95.9%
RU2	N/A	N/A	82.2%	75.0%
RU3	N/A	N/A	88.4%	90.5%
RU4	N/A	20.2%	20.2%	89.1%
RU5	N/A	N/A	66.9%	89.0%
RU6	2.1%	2.1%	58.3%	83.2%
RU7	10.3%	10.3%	62.9%	80.7%
RU8	0.9%	0.9%	73.9%	64.5%
RU9*	.....	.....	99.9%	96.4%
RU10	6.3%	11.7%	11.7%	79.0%
RU11	32.1%	32.1%	53.4%	74.5%
Shipment-Weighted Average**	10.9%	14.9%	70.6%	86.3%

The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* No impact because there are no shipments below the efficiency level corresponding to TSL1 and TSL2 for RU9.
** Weighted by shares of each equipment class in total projected shipments in 2027 for impacted consumers.

DOE first considered TSL 4, which represents the max-tech efficiency levels. At this level, DOE expects that all equipment classes would require 35H210 silicon steel and die-cast copper rotors. DOE estimates that approximately 0.34 percent of annual shipments across all electric motor equipment classes currently meet the max-tech efficiencies required. TSL 4 would save an estimated 23.6 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be −$17.67 billion using a discount rate of 7 percent, and −$11.30 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 725.80 Mt of CO_2, 278.95 thousand tons of SO_2, 1,173.58 thousand tons of NO_X, 1.82 tons of Hg, 5,415.99 thousand tons of CH_4, and 6.59 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 $30.07 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $18.13 billion using a 7-percent discount rate and $51.90 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 $30.54 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $70.67 billion.

At TSL 4, for the largest equipment class group and horsepower ranges, which are represented by RU1 and RU2, which together represent approximately 90 percent of annual shipments, there is a life cycle cost savings of −$276.4 and −$309.4 and a payback period of 20.3

years and 11.9 years, respectively. For these equipment classes, the fraction of customers experiencing a net LCC cost is 95.9 percent and 75.0 percent due to increases in total installed cost of $434.7 and $1,003.0, respectively. Overall, for the remaining equipment class groups and horsepower ranges, a majority of electric motor consumers (84.5 percent) would experience a net cost and the average LCC savings would be negative for all remaining equipment class groups and horsepower ranges.

At TSL 4, the projected change in INPV ranges from a decrease of $11,090 million to a decrease of $8,863 million, which corresponds to decreases of 220.8 percent and 176.4 percent, respectively. DOE estimates that industry must invest $13,516 million to comply with standards set at TSL 4. The significant increase in product and capital conversion costs is because DOE assumes that electric motor manufacturers will need to use die-cast copper rotors for most, if not all, electric motors manufactured to meet this TSL. This technology requires a significant level of investment because almost all existing electric motor production machinery would need to be replaced or significantly modified. Based on the shipments analysis used in the NIA, DOE estimates that approximately 0.3 percent of all electric motor shipments will meet the efficiency levels required at TSL 4, in the no-new-standards case in 2027, the compliance year of new and amended standards.

Under 42 U.S.C. 6295(o)(2)(B)(i), DOE determines whether a standard is economically justified after considering seven factors. Based on these factors, the Secretary concludes that at TSL 4 for electric motors, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions are outweighed by the negative NPV of consumer benefits, economic burden on many consumers, and the impacts on manufacturers, including the extremely large conversion costs, profit margin impacts that will result in a negative INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL. A majority of electric motor consumers (86.3 percent) would experience a net cost and the average LCC savings for each representative unit DOE examined is negative. In both manufacturer markup scenarios, INPV is negative at TSL 4, which implies that manufacturers would never recover the conversion costs they must make to produce electric motors at TSL 4. Consequently, the Secretary concludes that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents a level corresponding to the IE4 level, except for AO–polyphase specialized frame size electric motors, where it corresponds to a lower level of efficiency (*i.e.,* NEMA Premium level). TSL 3 would save an estimated 10.4 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be −$7.60 billion using a discount rate of 7 percent, and −$4.85 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 319.24 Mt of CO_2, 122.75 thousand tons of SO_2, 516.00 thousand tons of NO_X, 0.80 tons of Hg, 2,379.75 thousand tons of CH_4, and 2.90 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 $13.49 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is 8.19 billion using a 7-percent discount rate and $23.16 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 $14.08 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $31.80 billion.

At TSL 3, for the largest equipment class group and horsepower ranges, which are represented by RU1 and RU2, there is a life cycle cost savings of −$101.8 and −$336.9 and a payback period of 16.7 and 15.4, respectively. For these equipment classes, the fraction of customers experiencing a net LCC cost is 64.1 percent and 82.2 percent due to increases in total installed cost of $171.3 and $690.5, respectively. Overall, for the remaining equipment class groups and horsepower ranges, a majority of electric motor consumers (55.5 percent) would experience a net cost and the shipments-weighted average LCC savings would be negative for all remaining equipment class groups and horsepower ranges.

At TSL 3, the projected change in INPV ranges from a decrease of $1,364 million to a decrease of $342 million, which correspond to decreases of 27.2 percent and 6.8 percent, respectively. DOE estimates that industry must invest $1,618 million to comply with standards set at TSL 3. Based on the shipments analysis used in the NIA, DOE estimates that approximately 13.3 percent of all electric motor shipments will meet or exceed the efficiency levels required at TSL 3, in the no-new-standards case in 2027, the compliance year of new and amended standards.

Under 42 U.S.C. 6295(o)(2)(B)(i), DOE determines whether a standard is economically justified after considering seven factors. Based on these factors, the Secretary concludes that at TSL 3 for electric motors, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions are outweighed by the negative NPV of consumer benefits, economic burden on many consumers, and the impacts on manufacturers, including the large conversion costs, profit margin impacts that could result in a large reduction in INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL. A majority of electric motor consumers (70.6 percent) would experience a net cost and the average LCC savings would be negative. The potential reduction in INPV could be as high as 27.2 percent. Consequently, the Secretary concludes that TSL 3 is not economically justified.

DOE then considered TSL 2, the standard levels recommended in the November 2022 Joint Recommendation by the Electric Motors Working Group. TSL 2 would also align with the EU Ecodesign Directive 2019/1781, which requires IE4 levels for 75–200 kW motors.[97] TSL 2 would save an estimated 3.0 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $2.23 billion using a discount rate of 7 percent, and $7.47 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 91.69 Mt of CO_2, 35.12 thousand tons of SO_2, 148.74 thousand tons of NO_X, 0.23 tons of Hg, 690.10 thousand tons of CH_4, and 0.82 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 2 is $3.14 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 2 is $1.76 billion using a 7-percent discount rate and $5.72 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

[97] In terms of standardized horsepowers, this would correspond to 100–250 hp when applying the provisions from 10 CFR 431.25(k) (and new section 10 CFR 431.25(q)).

emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is $7.13 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 2 is $16.33 billion.

At TSL 2, for the largest equipment class group and horsepower ranges, which are represented by RU1 and RU2, there would be no changes in the standards. Overall, for the remaining equipment class groups and horsepower ranges, 14.9 percent of electric motor consumers would experience a net cost and the shipments-weighted average LCC savings would be positive for all remaining equipment class groups and horsepower ranges.

At TSL 2, the projected change in INPV ranges from a decrease of $333 million to a decrease of $303 million, which correspond to decreases of 6.6 percent and 6.0 percent, respectively. DOE estimates that industry must invest $468 million to comply with standards set at TSL 2. Based on the shipments analysis used in the NIA, DOE estimates that approximately 96.2 percent of all electric motor shipments will meet or exceed the efficiency levels required at TSL 2, in the no-new-standards case in 2027, the compliance year of new and amended standards.

Under 42 U.S.C. 6295(o)(2)(B)(i), DOE determines whether a standard is economically justified after considering seven factors. Based on these factors, the Secretary concludes that a standard set at TSL 2 for electric motors would be economically justified. At this TSL, the average LCC savings is positive. Only an estimated 14.9 percent of electric motor consumers experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. Notably, at TSL 2, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 6 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 2 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $3.14 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $5.72 billion (using a 3-percent discount rate) or $1.76 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the energy conservation standards, DOE notes that as compared to TSL 3 and TSL 4, TSL 2 has higher average LCC savings for consumers, significantly smaller percentages of electric motor consumers experiencing a net cost, a lower maximum decrease in INPV, and lower manufacturer conversion costs.

Although DOE considered amended standard levels for electric motors by grouping the efficiency levels for each equipment class groups and horsepower ranges into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For all equipment class groups and horsepower ranges, TSL 2 represents the maximum energy savings that does not result in the majority of consumers experiencing a net LCC cost. The ELs at the adopted TSL result in average positive LCC savings for all equipment class groups and horsepower ranges, 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 concluded they are economically justified, as discussed for TSL 2 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for electric motors at TSL 2. The new and amended energy conservation standards for electric motors, which are expressed as full-load nominal efficiency values are shown in Table V–44, Table V–45 and Table V–46.

TABLE V–44—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

TABLE V–44—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 Hz—Continued

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....
550/410	95.8	96.2	96.2	96.2	.....	.....	.....	.....
600/447	95.8	96.2	96.2	96.2	.....	.....	.....	.....
650/485	95.8	96.2	96.2	96.2	.....	.....	.....	.....
700/522	95.8	96.2	96.2	96.2	.....	.....	.....	.....
750/559	95.8	96.2	96.2	96.2	.....	.....	.....	.....

TABLE V–45—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY STANDARD FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

TABLE V–46—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY SPECIALIZED FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	74.0	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	.....	.....
15/11	90.2	89.5	91.0	91.0	.....	.....	.....	.....
20/15	90.2	90.2	91.0	91.0	.....	.....	.....	.....

2. Annualized Benefits and Costs of the Standards

The benefits and costs of the adopted 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 equipment that meet the adopted standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V–47 shows the annualized values for electric motors under TSL 2, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the standards for electric motors is $62.1 million per year in increased equipment costs, while the estimated annual benefits are $254.8 million in reduced equipment operating costs, $164.8 million in climate benefits, and $151.4 million in health benefits. In this case, the net benefit amounts to $508.9 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards for electric motors is $71.0 million per year in increased equipment costs, while the estimated annual benefits are $463.6 million in reduced operating costs, $164.8 million in climate benefits, and $300.7 million in health benefits. In this case, the net benefit amounts to $858.2 million per year.

TABLE V–47—ANNUALIZED BENEFITS AND COSTS OF AMENDED ENERGY CONSERVATION STANDARDS FOR ELECTRIC MOTORS

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	463.6	405.1	542.9
Climate Benefits *	164.8	148.0	186.5
Health Benefits **	300.7	269.5	341.0
Total Benefits †	929.1	822.5	1070.4
Consumer Incremental Equipment Costs ‡	71.0	73.7	73.0
Net Benefits	858.2	748.8	997.4
7% discount rate			
Consumer Operating Cost Savings	254.8	225.3	293.6
Climate Benefits * (3% discount rate)	164.8	148.0	186.5
Health Benefits **	151.4	137.1	169.5
Total Benefits †	571.0	510.4	649.6
Consumer Incremental Product Costs	62.1	63.8	63.9
Net Benefits	508.9	446.6	585.6

Note: This table presents the costs and benefits associated with electric motors 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 constant rate in the Primary Estimate, an increasing rate in the Low Net Benefits Estimate, and a declining rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this notice). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. 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.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For electric motors, the certification template reflects the general certification requirements specified at 10 CFR 429.64 and the product-specific requirements specified at 10 CFR 429.64. DOE is not amending the product-specific certification requirements for this equipment in this direct final rule.

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 amended by 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 final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action constitutes a significant regulatory action within the scope of section 3(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the final regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') and a final regulatory flexibility analysis (''FRFA'') 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 is not obligated to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act. See 5 U.S.C. 601(2), 603(a). As discussed previously, DOE has determined that the November 2022 Joint Recommendation meets the necessary requirements under EPCA to issue this direct final rule for energy conservation standards for electric motors under the procedures in 42 U.S.C. 6295(p)(4). DOE notes that the NOPR for energy conservation standards for electric motors published elsewhere in this **Federal Register** contains an IRFA.

C. Review Under the Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (''PRA''), a person is not required to respond to a collection of information by a Federal agency unless that collection of information displays a currently valid OMB Control Number.

OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered equipment, including electric motors.

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

New certification data would be required for electric motors were this direct final rule to be finalized as proposed; however, DOE is not proposing new or amended certification or reporting requirements for electric motors in this direct final rule. Instead, DOE may consider proposals to establish certification requirements and reporting for electric motors under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy

conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

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 rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 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 direct final 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, sec. 201 (codified at 2 U.S.C. 1531). For a 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 ''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.*

DOE has concluded that this direct final rule 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 electric motor manufacturers in the years between the direct final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency electric motors, 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 direct final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap with the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and the TSD for this direct final 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 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) and 42 U.S.C. 6316(a), this rule establishes new and amended energy conservation standards for electric motors that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule

that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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 rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this direct final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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 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 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 concludes that this regulatory action, which sets forth new and amended energy conservation standards for electric motors, is not a significant energy action because 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 direct final 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.[98] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[99]

NEMA MG 1–2016 was previously approved for incorporation by reference in the section where it appears in this proposed rule and no change is made.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this direct final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on May 1, 2023, Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable 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 stated in the preamble, DOE amends part 431 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

[98] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed December 12, 2022).

[99] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.12 by adding, in alphabetical order, definitions for ''Specialized frame size'' and ''Standard frame size,'' to read as follows:

§ 431.12 Definitions.

* * * * *

Specialized frame size means an electric motor frame size for which the rated output power of the motor exceeds the motor frame size limits specified for standard frame size. Specialized frame sizes have maximum diameters corresponding to the following NEMA Frame Sizes:

Motor horsepower/standard kilowatt equivalent	Maximum NEMA frame diameters							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	48	.....	48	48	48	48	140	140
1.5/1.1	48	48	48	48	140	140	140	140
2/1.5	48	48	48	48	140	140	180	180
3/2.2	140	48	140	140	180	180	180	180
5/3.7	140	140	140	140	180	180	210	210
7.5/5.5	180	140	180	180	210	210	210	210
10/7.5	180	180	180	180	210	210	.....	.....
15/11	210	180	210	210	.....	.....	.....	.....
20/15	210	210	210	210	.....	.....	.....	.....

Standard frame size means a motor frame size that aligns with the specifications in NEMA MG 1–2016, section 13.2 for open motors, and NEMA MG 1–2016, section 13.3 for enclosed motors (incorporated by reference, see § 431.15).

* * * * *

■ 3. Amend § 431.25 by:

■ a. Revising paragraph (h) introductory text; and

■ b. Adding paragraphs (m) through (r).

The revision and additions read as follows:

§ 431.25 Energy conservation standards and effective dates.

* * * * *

(h) Each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an electric motor meeting the criteria in paragraph (g) of this section and with a power rating from 1 horsepower through 500 horsepower, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) on or after June 1, 2016, but before June 1, 2027, shall have a nominal full-load efficiency of not less than the following:

* * * * *

(m) The standards in tables 8 through 10 of this section apply only to electric motors, including partial electric motors, that satisfy the following criteria:

(1) Are single-speed, induction motors;

(2) Are rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(3) Contain a squirrel-cage (MG 1) or cage (IEC) rotor;

(4) Operate on polyphase alternating current 60-hertz sinusoidal line power;

(5) Are rated 600 volts or less;

(6) Have a 2-, 4-, 6-, or 8-pole configuration,

(7) Are built in a three-digit or four-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent),

(8) Produce at least one horsepower (0.746 kW) but not greater than 750 horsepower (559 kW), and

(9) Meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N, NE, NEY, NY or H, HE, HEY, HY motor.

(n) Starting on June 1, 2027, each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an electric motor meeting the criteria in paragraph (m) of this section and with a power rating from 1 horsepower through 750 horsepower, but excluding fire pump electric motors and air-over electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

TABLE 8 TO PARAGRAPH (n)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2

TABLE 8 TO PARAGRAPH (n)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 Hz—Continued

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....
550/410	95.8	96.2	96.2	96.2	.....	.....	.....	.....
600/447	95.8	96.2	96.2	96.2	.....	.....	.....	.....
650/485	95.8	96.2	96.2	96.2	.....	.....	.....	.....
700/522	95.8	96.2	96.2	96.2	.....	.....	.....	.....
750/559	95.8	96.2	96.2	96.2	.....	.....	.....	.....

(o) Starting on June 1, 2027, each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an air-over electric motor meeting the criteria in paragraph (m) of this section and with a power rating from 1 horsepower through 250 horsepower, built in a standard frame size, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

TABLE 9 TO PARAGRAPH (o)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY STANDARD FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

(p) Starting on June 1, 2027, each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an air-over electric motor meeting the criteria in paragraph (m) of this section and with a power rating from 1 horsepower through 20 horsepower, built in a specialized frame size, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

TABLE 10 TO PARAGRAPH (p)—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY SPECIALIZED FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 Hz

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	74.0	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	.....	.....
15/11	90.2	89.5	91.0	91.0	.....	.....	.....	.....
20/15	90.2	90.2	91.0	91.0	.....	.....	.....	.....

(q) For purposes of determining the required minimum nominal full-load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepower or two kilowatt ratings listed in any table of energy conservation standards in paragraphs (n) through (p) through of this section, each such motor shall be deemed to have a listed horsepower or kilowatt rating, determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepowers shall be rounded up to the higher of the two horsepowers;

(2) A horsepower below the midpoint between the two consecutive horsepowers shall be rounded down to the lower of the two horsepowers; or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula 1 kilowatt = ($^{1}/_{0.746}$) horsepower. The conversion should be calculated to three significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraphs (q)(1) or (2) of this section, whichever applies.

(r) The standards in tables 8 through 10 of this section do not apply to the following electric motors exempted by the Secretary, or any additional electric motors that the Secretary may exempt:

(1) Component sets of an electric motor;

(2) Liquid-cooled electric motors;

(3) Submersible electric motors; and

(4) Inverter-only electric motors.

[FR Doc. 2023–10019 Filed 5–31–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 88 Thursday,
No. 105 June 1, 2023

Part IV

Federal Communications Commission

47 CFR Part 1
Assessment and Collection of Regulatory Fees for Fiscal Year 2023; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 22–301; MD Docket No. 23–159; FCC 23–34; FRS ID 142215]

Assessment and Collection of Regulatory Fees for Fiscal Year 2023

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on revising the fee schedule of FY 2023 regulatory fees and on several additional regulatory fee issues, as described in the text below.

DATES: Submit comments on or before June 14, 2023; and reply comments on or before June 29, 2023.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments identified by MD Docket No. 23–159, by any of the following methods below. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

1. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

2. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. *Until further notice, the filing window is not open at the Commission's office located at 9050 Junction Drive, Annapolis, MD 20701.*

3. Pursuant to section 1.49 of the Commission's rules, 47 CFR 1.49, parties to this proceeding must file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): *https://apps.fcc.gov/ecfs/.*

4. *Materials in Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

5. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or *Roland.Helvajian@FCC.Gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), FCC 23–34, MD Docket No. 22–301, and MD Docket No. 23–159, adopted on May 5, 2023 and released on May 8, 2023. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

I. Administrative Matters

6. *Ex Parte Information.* The proceeding initiated by this Notice of Proposed Rulemaking, in which we seek comment on proposals as described above, shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

7. *Initial Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities accompanying the NPRM. The IRFA) is set forth in the back of this document.

8. *Initial Paperwork Reduction Act of 1995 Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Introduction

9. For fiscal year (FY) 2023, the Commission is required to collect

$390,192,000 in regulatory fees, pursuant to sections 9 and 9A of the Communications Act of 1934, as amended (Communications Act or Act), and the Commission's FY 2023 Appropriations Act. In this annual NPRM, we seek comment on the Commission's proposed methodology and regulatory fees for FY 2023, as set forth in Tables 2 and 3. Based on the record received in response to the Notice of Inquiry (NOI) in MD Docket No. 22–301, and after a review of the work being conducted by Commission employees, we seek comment on a proposal to treat certain FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that have previously been considered indirect FTEs as direct FTEs for the purpose of calculating regulatory fees. Specifically, where we are able to determine that time is being spent on work that is directly related to the oversight and regulation of regulatory fee payors in a core bureau and that such determination is reasonably accurate for the fiscal year, we propose to reallocate the FTE burden of such work as direct to the relevant core bureau(s).

10. We also seek comment on several additional regulatory fee issues, including: (i) the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) defining the category of operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) for regulatory fee purposes, including whether a separate regulatory fee category is necessary, and how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc, including the two licensed OOS and RPO spacecraft that remain operational in FY 2023; (iii) evaluating how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iv) considering whether to continue in FY 2023 several of the temporary measures we implemented in FYs 2020 through 2022; and (v) whether to permit regulatory fee payors to prepay their regulatory fees in installments.

III. Discussion

11. In accordance with the statute, each year, in an annual fee proceeding, the Commission proposes adjustments to the prior fee schedule under section 9(c) to ''(A) reflect unexpected increases or decreases in the number of units subject to the payment of such fees; and (B) result in the collection of the amount required'' by the Commission's annual appropriation. Such changes are rarely the subject of dispute and are usually addressed in the more ministerial changes to the fee schedule. The Commission will also propose amendments to the fee schedule under section 9(d) ''if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. Challenges to the Commission's allocation of FTEs are not uncommon.

12. The Commission has explained that, consistent with its statutory directive, it bases regulatory fees on the direct FTEs in core bureaus. The Commission has stated that, given the Communication Act's explicit language that fees must reflect FTEs, the FTE counts are by far the most administrable starting point for regulatory fee allocations. The Commission does not assign direct FTEs within a bureau to specific fee categories by rote or at random, but rather in a manner that reflects the time spent by FTEs on a regulatory fee category, which is in itself a reflection of ''benefit'' to the fee category. Thus, the Commission has explained it continues to apportion regulatory fees across fee categories based on the number of direct FTEs in each core bureau and the proportionate number of indirect FTEs and to take into account factors that are reasonably related to the payor's benefits.

13. *Full Time Equivalent (FTE) Allocation and Fee Calculation.* The Commission allocates FTEs according to the nature of the work performed by its different organizational units. If the work performed by a group or office is directly related to our oversight and regulation of a regulatory fee category or categories in one of the four core licensing bureaus, then such FTEs are counted as a direct FTE. If the work cannot be allocated to one of the bureau's designated fee categories, the work performed is counted as an indirect FTE. Under this framework, the Commission, therefore, has historically assessed the allocation of FTEs by first determining the number of direct FTEs, those non-auctions FTEs that work in each of the Commission's core bureaus (*i.e.,* the Wireless Telecommunications Bureau, the Media Bureau, part of the Wireline Competition Bureau, and part of the International Bureau), and then attributing all other non-auction FTEs outside the core bureaus and other Commission costs as indirect. Regulatory fees are initially apportioned across the regulatory fee categories based on the number of direct FTEs in each core bureau whose time is focused on a particular industry segment and then is adjusted ''to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.''

14. The FTE time devoted to developing and implementing the Commission's spectrum auctions is not included in the calculation of regulatory fees and is not offset by the collection of regulatory fees. Instead, such FTE time is offset by the auction proceeds that the Commission is permitted to retain pursuant to section 309(j)(8)(B) of the Communications Act and the Commission's annual appropriation. Thus, spectrum auctions FTEs are not included in the calculation of regulatory fees and the Commission's methodology excludes all spectrum auction-related FTEs and their overhead from the regulatory fee calculations. To the extent that FTEs within core bureaus spend a portion of their time on auctions issues and a portion of their time on appropriated issues, their time is split and only the non-auctions portion of their time is reflected in the relevant core bureau's FTE count.

15. Early in each fiscal year, the Commission receives FTE data from its Human Resources Management office and identifies FTEs at the core bureau level (*i.e.,* direct FTEs), which is then used to determine the FTE allocations for the four core bureaus. This FTE data is then validated through consultation with the bureaus and offices and apportioned to the various fee categories within each core bureau based on FTE time spent on each fee category. After the number of direct FTEs is determined for each core bureau of the Commission, the direct FTE numbers are used to calculate the percentage of the total amount of regulatory fees to be collected for a given fiscal year. We allocate appropriated amounts to be recovered proportionally based on the number of direct FTEs within each core bureau, with indirect FTEs allocated in proportion to the direct FTEs within each core bureau. Those proportions are then subdivided within each core bureau into fee categories among the regulatees served by the core bureau. Finally, within each regulatory fee category the amount to be collected is divided by a unit that allocates the regulatee's proportionate share based on an objective measure.

16. In prior regulatory fee proceedings, the Commission has

categorized the FTEs in the Enforcement Bureau, Consumer and Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairwoman's and Commissioners' Offices, Office of the Managing Director, Office of General Counsel, Office of Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Workplace Diversity, Office of Media Relations, Office of Economics and Analytics, and Office of Administrative Law Judges, along with some FTEs in the Wireline Competition Bureau and the International Bureau as indirect for regulatory fee purposes. Unlike the work of direct FTEs, the work of indirect FTEs in the non-core bureaus and offices is not focused on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, and the public as a whole. The Commission's high percentage of indirect FTEs demonstrates that many of our activities and costs are not limited to a particular fee category.

17. In this NPRM, we are not proposing adjustments to our regulatory fee categories or methodologies such that our actions require 90 days' notice to Congress. Instead, in response to concerns expressed in the NOI record, we have undertaken a fresh, high level evaluation of the work of indirect FTEs. As more fully explained below, where we can determine that the work of a historically indirect FTE is directly related to our oversight and regulation of a regulatory fee payor, and we are confident that such determination is reasonably accurate for the fiscal year, we propose to consider the FTE burden of such work as direct to the relevant core bureau(s), and accordingly reallocate such indirect FTEs as direct, solely for the purposes of calculating regulatory fees.

18. In this NPRM, we propose and seek comment on regulatory fees for FY 2023 as set forth in Tables 2 and 3. In particular, and as fully discussed below, we seek comment on our proposal to reallocate a limited number of indirect FTEs within the Office of Economics and Analysis (OEA), the Office of General Counsel (OGC), and the Public Safety and Homeland Security Bureau (PSHSB) as direct FTEs and to incorporate them into the count of FTEs of the relevant core bureau, solely for the purposes of calculating regulatory fees for FY 2023.

19. We also seek comment on several additional regulatory fee issues, including: (i) the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) defining the category of operations for OOS and RPO for regulatory fee purposes, including whether a separate regulatory fee category is necessary, and how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc, including the two licensed OOS and RPO spacecraft that remain operational in FY 2023; (iii) evaluating how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iv) considering whether to continue in FY 2023 several of the temporary measures we implemented in FYs 2020 through 2022; and (v) whether to permit regulatory fee payors to prepay their regulatory fees in installments.

1. Assessment of Regulatory Fees

a. Methodology for Assessing Regulatory Fees

20. Congress has required us to collect $390,192,000 in regulatory fees for FY 2023. Section 9 of the Communications Act requires us to set regulatory fees to ''reflect the full-time equivalent number of employees within the bureaus and offices of the Commission adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' Our first step in establishing our regulatory fee schedule is to take into consideration the adjustments necessitated by the more discernable changes from the prior year regulatory fee proceeding, *e.g.,* changes in the (i) FY appropriation, (ii) FTE levels, and (iii) relevant unit measures for each regulatory fee category. Such adjustments are often considered ministerial. Our second step is a more substantive review where we look to the core bureaus within the Commission in order to identify the number of direct non-auction FTEs in each core bureau. Once the direct FTEs are identified, we then allocate fees to specific fee categories within each core bureau. These proportional calculations allocate all Commission non-auction related costs across all fee categories.

21. For FY 2023, in response to the comments we received to our NOI, we propose to employ the same methodology, but, in addition to looking at the current allocation of direct FTEs within the core bureaus, we propose to rely on and include a high level analysis of the work of our indirect FTEs in non-core bureaus and offices and, where we can determine with reasonable accuracy for the fiscal year that such work is being spent on the regulation and oversight of a regulatory fee payor, we propose to reallocate the burden of that work as direct to a core bureau, solely for regulatory fee purposes. As described in more detail below, we propose that approximately 63 indirect FTEs should be reallocated as direct FTEs to a core bureau, for regulatory fee purposes, based on our evaluation of the burden of their work. Some of the reallocations we are proposing are of FTE time that had previously been reassigned from direct to indirect as the result of a Commission reorganization. As a result of taking this fresh, high level evaluation of the work of our indirect FTEs we found that even though the physical location of certain FTEs moved from a core bureau to an indirect bureau or office, the burden of their FTE work remained focused directly on the oversight and regulation of specific regulatory fee payors in a core bureau(s). Insofar as we are confident this determination is reasonably accurate for the fiscal year, we find that reallocating certain indirect FTEs for regulatory fee purposes in the manner that we are proposing is consistent with section 9 of the Communications Act, which requires us to base our methodology on the number of FTEs in calculating regulatory fees. We seek comment on this proposal and on the schedule of FY 2023 regulatory fees as set forth in Tables 2 and 3. Any proposals or comments requesting a change or modification to our proposed methodology and regulatory fees for FY 2023 should include a thorough analysis showing a sufficient basis for making the change and provide alternative options for the Commission to meet its statutory obligation to collect the full amount of the appropriation by the end of the fiscal year. Commenters should also indicate how such proposed alternative options are fair, administrable, and sustainable.

b. Reallocation, for Regulatory Fee Purposes, of Certain Indirect FTEs as Direct FTEs

22. Broadcasters and satellite operators commenting in response to our NOI have argued that the methodology used to proportionally assign indirect FTEs is inequitable. We disagree. Non-core bureaus and offices handle a variety of issues and generally most indirect FTE time is devoted to many matters including services that are not specifically correlated with one of the core bureaus or one category of regulatory fee payors. Further, because Commission attorneys, engineers,

analysts, and other staff work on a variety of issues during a single fiscal year, a snapshot of indirect FTE assignments in a division in any bureau or office, for example, may misrepresent the work being done a short time later, and, if allocated as direct FTEs, could result in an inaccurate FTE count and fee calculation for a core bureau. In light of the issues raised by the commenters to the NOI, however, and as noted above, we have undertaken a high level evaluation of the work performed by the Commission's indirect FTEs. As a result, we now propose to reallocate certain indirect FTEs as direct FTEs and incorporate them into the count of FTEs of the relevant core bureau solely for purposes of calculating regulatory fees for FY 2023. This proposal would result in changes in the percentages of direct FTEs in the core bureaus. We seek comment on this proposal.

23. According to information provided by our Human Resources Management office, there currently are 339.25 direct non-auctions FTEs for FY 2023 that are distributed among the core bureaus. Today we propose to reallocate 63 indirect FTEs from OEA, OGC, and PSHSB and add those FTEs as direct to a relevant core bureau solely for the purposes of collecting regulatory fees, which would result in a revised total of 402.25 direct non-auctions FTEs. Our calculations of direct FTEs under our proposal, which are more fully detailed below, would be as follows: International Bureau (31), Wireless Telecommunications Bureau (98), Wireline Competition Bureau (143.25), and Media Bureau (130). Based on these proposed reallocations and after adjustments are made to these direct FTE counts to implement Commission precedent, we would collect approximately $30.16 million (7.73%) in fees from the International Bureau regulatory fee payors; $95.36 million (24.44%) in fees from the Wireless Telecommunications Bureau regulatory fee payors; $139.42 million (35.73%) in fees from Wireline Competition Bureau regulatory fee payors; and $125.25 million (32.10%) in fees from Media Bureau regulatory fee payors.

CORE BUREAU FTE PERCENTAGES WITH AND WITHOUT PROPOSED INDIRECT FTE REALLOCATIONS

Core bureau	2022 FTE%	2022 Amount (millions) FY 2022 Appropriation was $381.95	2023 FTE % without indirect FTE reallocations	2023 amount without indirect FTE reallocations (millions) FY 2023 Appropriation is $390.192	2023 Proposed FTE % with certain indirect FTE reallocations	2023 Proposed amount with certain indirect FTE reallocations (millions) FY 2023 Appropriation is $390.192
Wireline Bureau	33.94	$129.62	35.57	$138.79	35.73	$139.42
Media Bureau	.....	137.89	33.96	132.52	32.10	125.25
Media Bureau subcategory Broadcasters	16.25	62.07	15.28	59.65	14.27	55.68
Media Bureau subcategory Cable	19.85	75.82	18.68	72.87	17.83	69.57
Wireless Bureau	21.4	81.74	22.19	86.56	24.44	95.36
International Bureau	8.56	32.70	8.28	32.32	7.73	30.16

24. After our analysis of the work performed in our non-core bureaus and offices, we reaffirm that, in general, the vast majority of the FTE burden of work is properly considered indirect. In evaluating indirect FTE time, we are mindful that any changes we adopt must serve the goal of ensuring that the Commission's assessment of regulatory fees is fair, administrable, and sustainable. We also recognize that allocating regulatory fees is not and cannot be an exact science. We continue to conclude the Commission's indirect FTE time is devoted to a variety of issues, including matters that are either not directly allocable or not associated with a regulatory fee payor, and therefore should continue to be considered indirect and allocated in a proportional manner across all fee categories. As the Commission explained in the *FY 2019 Report and Order,* by analyzing indirect FTE time in order to try to associate it with a core bureau in one given period of time, and ignoring the understanding of management regarding ongoing and future work, we risk proffering FTE allocations that are not accurate for the entire year. We are also aware that in the non-core bureaus and offices much of the work that could be assigned to a single category of regulatory fee payors is likely to be interspersed with the work that Commission staff does on behalf of many entities that do not pay regulatory fees, *e.g.,* governmental entities, non-profit organizations, work that does not equate with any specific regulatory fee category, and regulatees that have an exemption.

25. Nevertheless, the Commission has previously evaluated whether certain FTEs should be reallocated, for regulatory fee purposes, from direct to indirect, from indirect to direct, or from one core bureau to another based on the nature of the work. Insofar as the regulatory fees are based on FTE time associated with the oversight and regulation of regulatory fee payors, we only propose to reallocate indirect FTEs to a core bureau for regulatory fee purposes where we have determined that such FTE work is primarily in furtherance of the oversight and regulation of that industry and is reasonably accurate for the fiscal year. After taking a closer look at FTE time in several non-core bureaus and offices, we now conclude that we can reasonably identify instances within OEA, OGC, and PSHSB, where it is appropriate to consider the FTE burden of such work as directly devoted to the oversight and regulation of certain industries such that the FTE time should be reallocated as direct for the relevant core bureau(s).

26. After our review of the work within the Commission's bureaus and offices, we recognize that experts in the non-core bureaus and offices engage in measurable work associated with the oversight and regulation of regulatory fee payors. We will continue to be mindful of these findings in coming years while also relying upon the expertise of the bureau or office management to evaluate the overall nature of the work of each organizational unit, the FTE levels committed to the different types of work, and the level of FTE support, if any, primarily associated with the oversight and regulation of regulatory fee payors. In gathering this high level

data for this proposal, we directed non-core bureaus and offices to evaluate if measurable FTE time for fiscal year 2023 is primarily spent on the regulation and oversight of an industry subject to regulatory fees. Our objective was to rigorously address the concerns that certain fee payors have expressed regarding the number of indirect FTEs. We have satisfied our goal and seek comment on our tentative conclusion and the factors we employed in reaching these proposed reallocations for regulatory fee purposes. We further recognize that these proposed reallocations for calculating regulatory fees may require the Commission to continue to assess certain indirect FTEs annually, in addition to the annual calculation of direct FTEs in core bureaus.

27. *Office of Economics and Analytics (OEA).* During an agency reorganization, the Commission reassigned staff from several bureaus and offices to the new OEA, effective December 11, 2018. After the reorganization, the Commission concluded that it was appropriate for the non-auctions FTEs in OEA to be considered indirect FTEs because the work of its FTEs would benefit the Commission and the telecommunications industry and would not specifically focused on the regulatory fee payors. In creating OEA, the Commission reassigned 95 FTEs (of which 64 were not auctions-funded) as OEA FTEs.

28. OEA is responsible for expanding and strengthening the use of economic analysis in Commission policy making, for enhancing the development and use of auctions, and for implementing consistent and effective agency-wide data practices and policies. Specifically, OEA (a) provides economic analysis, including cost-benefit analysis, for rulemakings, transactions, adjudications, and other Commission actions; (b) manages Commission auctions in support of and in coordination with other bureaus and offices; (c) develops policies and strategies to help manage Commission data resources and establish best practices for data use throughout the Commission in coordination with other bureaus and offices; and (d) conducts long-term research on ways to improve the Commission's policies and processes in each of these areas. Notably, OEA collaborates with and advises other bureaus and offices in the areas of economic and data analysis and with respect to the analysis of benefits, costs, and regulatory impacts of Commission policies, rules, and proposals. As part of this collaboration, OEA reviews all rulemakings prepared by those bureaus and offices, all other Commission-level items that contain economic or data analysis, and similar items that the bureaus or offices release on delegated authority.

29. NAB contends that we should consider treating the FTEs that were reorganized to OEA from direct bureaus as direct FTEs. We disagree that all such FTEs should be reallocated to direct. However, based on our experience over the approximately four years that OEA has been in existence, we have observed that certain bureaus tend to generate more numerous and more complex economic and data issues for OEA to analyze as well as more documents for release that require OEA review and expertise. As a result, OEA has necessarily devoted more time to and developed greater expertise in certain areas under the purview of a specific bureau. In light of that understanding, for FY 2023, we find that there is measurable work done by OEA that is being done directly in furtherance of the oversight and regulation of regulatory fee payors in certain industry segments. We recognize that we previously rejected suggestions related to reallocating OEA FTEs. Our proposals, however, are based on a current, deeper analysis of FTE work. Based on this analysis, we propose to reallocate a certain number of OEA's FTEs as direct for regulatory fee purposes, and include those FTEs in the count of a core bureau. We seek comment on this general proposal.

30. Specifically, we propose to allocate a certain number of OEA FTEs as direct to reflect the work by OEA on wireline matters related to universal service fund issues in high-cost areas; competition and interconnection; the setting of rates for calls from incarcerated persons; the establishment of a national suicide hotline; and efforts to protect privacy. Based on our review, because this FTE work is being done directly in furtherance of the oversight and regulation of Wireline Competition Bureau regulatory fee payors, we propose that the burden of the work of 13 OEA FTEs should be reallocated as direct FTEs to the Wireline Competition Bureau for purposes of our regulatory fee calculation. Similarly, our analysis shows that OEA non-auctions FTE's work with the Wireless Telecommunications Bureau addresses various wireless and spectrum issues, such as mergers, transactions, and acquisitions, spectrum licensing, mobile spectrum holdings policies, and deployment in rural areas and on tribal lands. Because this work is being done directly in furtherance of the oversight and regulation of Wireless Telecommunications Bureau regulatory fee payors, we propose that the burden of the work of eight OEA FTEs should be reallocated as direct FTEs to the Wireless Telecommunications Bureau, for purposes of our regulatory fee calculation. OEA FTEs' work with the Media Bureau relates to broadcast and cable issues, including ownership regulation, next generation standards, content source disclosures, program carriage and retransmission, and rates and billing practices. We find that after analysis, because their work is being done directly in furtherance of the oversight and regulation of Media Bureau regulatory fee payors, the burden of the work of seven OEA FTEs should be reallocated as direct FTEs to the Media Bureau, proportionally among the Media Bureau regulatory fee categories, for purposes of our regulatory fee calculation. OEA's work with the International Bureau addresses national security, mergers and acquisitions, undersea cables, and satellite issues and we find that, because their work is being done directly in furtherance of the oversight and regulation of International Bureau regulatory fee payors, the burden of the work of two OEA FTEs should be reallocated as direct FTEs to the International Bureau, proportionally among the International Bureau regulatory fee categories, for purposes of our regulatory fee calculation.

31. Notably, our analysis reveals that after the Commission's creation of OEA, given the amount of economic analysis and data issues being generated by the core bureaus, the work and expertise of certain of OEA's FTEs remained focused on the oversight and regulation of certain regulatory fee payors in a manner that was consistent with the work they were doing in their previous core bureau, which further supports our proposal to reallocate the burden of the work of certain of OEA's FTEs as direct for regulatory fee purposes. We seek comment on our proposal to reallocate a total of 30 OEA FTEs as direct FTEs to the core bureaus as follows: 13 FTEs to the Wireline Competition Bureau, eight FTEs to the Wireless Telecommunications Bureau, seven FTEs to the Media Bureau, and two FTEs to the International Bureau, for regulatory fee purposes.

32. *Office of General Counsel (OGC).* In the context of the Commission's annual regulatory fee proceeding, the work of the OGC, as represented by FTE allocations, has been considered to be indirect. As we explain below, on review, we believe that certain aspects of OGC's work are sufficiently linked to the oversight and regulation of

individual regulatory fee categories that the associated FTEs could properly be considered direct FTEs for such regulatory fee categories.

33. OGC serves as the chief legal advisor to the Commission and its various bureaus and offices. In that capacity OGC's responsibilities are generally described as interpreting new and existing statutes and executive orders as they pertain to the Commission's exercise of its Communications Act authority and other authorities, as well as performing such functions involving implementation of such statutes and executive orders as may be assigned to it by the Commission. OGC advises the Commission in the preparation and revision of our rules, recommends decisions in adjudicatory matters before the Commission, assists the Commission in its decision-making capacity and performs a variety of legal functions regarding internal and other administrative matters. OGC also advises and represents the Commission in matters of litigation. These roles are divided between the Administrative Law Division and the Litigation Division and are overseen by the General Counsel (GC) and the GC's Front Office.

34. The Administrative Law Division provides legal advice to the Commission concerning a wide array of substantive areas of the law necessary to the functioning of any federal agency. Such work benefits the work of the Commission as a whole and is not specific to any particular regulatory fee category. As such, the FTE burden associated with such work properly remains allocated as indirect. In contrast, it is possible to allocate some of the work of the Administrative Law Division in reviewing Commission rules, proposed rules, and adjudicatory orders, as well as providing extensive advice on the Commission's authority under the Communications Act, including the exercise of delegated authority by the bureaus and offices, to the core bureaus and offices that develop the underlying orders and seek the advice of OGC. Where this work is directly related to our oversight and regulation of specific regulatory fee payor categories, we propose allocating the FTE burden of such work as direct to the relevant bureau(s). Thus, we propose as follows for FY 2023: one OGC FTE would be reallocated as direct to the Wireline Competition Bureau; two OGC FTEs would be reallocated as direct to the Wireless Telecommunications Bureau; one OGC FTE would be reallocated as direct to the Media Bureau, proportionally among the Media Bureau fee categories; and one OGC FTE would be reallocated as direct to the International Bureau, proportionally among the International Bureau fee categories. We seek comment on this proposal.

35. The Litigation Division represents the Commission in a wide variety of court cases covering actions that most federal agencies are subject to (*e.g.,* personnel, Federal Tort Claims Act, Freedom of Information Act, False Claims Act, and contract actions and disputes) in addition to challenges regarding the Commission's exercise of our Communications Act authority. As we explain below, after careful consideration, we do not propose any FTE changes for the Litigation Division. The level of effort to support litigation that is unrelated to our Communications Act authority is generally not tied to oversight and regulation of any regulatory fee category. Thus, the FTE burden remains appropriately considered as indirect. The FTE burden associated with litigation that directly touches on our Communications Act authority should also remain as indirect. We make this determination for a variety of reasons. Primarily, it is not possible to determine with any level of consistency year to year whether the FTE work in support of litigation matters benefits a particular regulatory fee category. This is particularly true because the essential issue in dispute when a matter moves to litigation may touch on issues of broader concern than any one regulatory fee group, or conversely be so procedural as to be effectively generic to all federal agency action. Moreover, at its core, the FTE work defending the Commission's expert authority in implementing the Communications Act is the epitome of work that benefits the agency as a whole and we do not believe it would be fair for any one regulatory fee group to shoulder the FTE burden of such work.

36. *Public Safety and Homeland Security Bureau (PSHSB).* PSHSB advises and coordinates within the Commission on all matters pertaining to public safety, homeland security, national security, cybersecurity, emergency management and preparedness, disaster management, and related matters. The bureau leads initiatives that strengthen public safety and emergency response capabilities enabling the Commission to assist the public, first responders, law enforcement, hospitals, the communications industry and all levels of government in times of emergency.

37. PSHSB is organized into three divisions: the Policy and Licensing Division, the Operations and Emergency Management Division, and the Cybersecurity and Communications Reliability Division. After assessing the work performed in these three divisions, in instances where we are able to determine that the work being performed is directly related to the oversight and regulation of regulatory fee payors in a core bureau, we are proposing to consider the FTE burden of such work as direct to the relevant core bureau(s). We seek comment on this proposal for each PSHSB division below.

38. The Policy and Licensing Division develops and administers rules, regulations, and policies to support public safety entities, including law enforcement, fire and emergency medical first responders, Public Safety Answering Points, and emergency operations organizations. The division handles licensing of public safety frequencies, including modifications, renewals and adjudications, in frequencies below 470 MHz, and in 470–512 MHz, 700 MHz, 800 MHz, 4.9 GHz and 5.9 GHz under part 90 of the Commission's rules, and the microwave bands under part 101; 911/Enhanced 911/Next Generation 911; Communications Assistance for Law Enforcement Act; the Emergency Alert System; operability and interoperability for public safety communications and the First Responder Network Authority; and intra- and interagency coordination on spectrum management.

39. After analyzing at a high level data regarding the FTE work in the Policy and Licensing Division, we find that, because the burden of the work of 14 of the FTEs in this division is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau, we propose that it is appropriate to consider such work as direct to the relevant bureau, for regulatory fee purposes. Specifically, of the 14 FTEs we have identified, there are two FTEs that could be reallocated as direct FTEs to the Wireline Competition Bureau, eight FTEs that could be reallocated as direct FTEs to the Wireless Telecommunications Bureau, and four FTEs that could be reallocated as direct FTEs to the Media Bureau.

40. With regard to the two FTEs we propose to consider as direct to the Wireline Competition Bureau, and the eight FTEs that we propose to consider as direct to the Wireless Telecommunications Bureau, we propose these reallocations for regulatory fee purposes because the burden of the work performed on 911 policy, covering issues such as 911 location accuracy, and the transition to

Next Generation 911, as well as clarifying provider obligations and acting on waiver and other provider-specific requests, directly furthers the oversight and regulation of regulatory fee payors of the Wireline Competition Bureau and the Wireless Telecommunications Bureau. Similarly, with regard to the four FTEs we propose to consider as direct to the Media Bureau, we propose these reallocations for regulatory fee purposes, proportionally among the fee categories in the Media Bureau, because the FTE burden of the work on the Emergency Alert System, developing and maintaining the operational rules that apply to EAS participants, facilitating interactions between EAS participants and alert originators, reviewing State EAS Plans, and acting on waiver and similar requests directly furthers the oversight and regulation of the regulatory payors of the Media Bureau. We seek comment on this proposal.

41. The Operations and Emergency Management Division (OEMD) ensures the readiness of the Federal Communications Commission to respond to threats and emergencies; conducts and coordinates risk and incident management activities; and supports public safety and events of national security significance. Division staff recommend, develop, and implement emergency plans, policies, and preparedness programs covering reporting and situational awareness of communications status during times of emergency; Commission functions during emergency conditions; and the provision of service by communications service providers during emergency conditions.

42. The division staff provide legal guidance and perform technical operations in support of interagency Federal, State, Local, Tribal, and Territorial (SLTT) government national security and public safety risk and incident management efforts. In addition, the division provides situational awareness to FCC and federal government leadership regarding national security risks and makes recommendations to help manage those risks; manages the FCC Continuity Programs to ensure the Commission's ability to perform the functions vital to an enduring government and the availability of nationwide and international communications under all conditions; and assesses and evaluates the status of communications services and infrastructure through Over-The-Air observations and analysis by its Spectrum Monitoring and Analysis Response Team. The division also coordinates with the U.S. Department of Homeland Security on critical national security and emergency preparedness priority communications programs, such as Telecommunication Service Priority Program, Government Emergency Telecommunications Service, and Wireless Priority Service.

43. After analyzing at a high level data regarding the FTE work in OEMD, we find that the work of five of the FTEs in this division is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau. We propose to consider the FTE burden of such work as direct to the relevant bureau for regulatory fee purposes. Specifically, of the five FTEs we have identified there are two FTEs that could be reallocated as direct FTEs to the Wireline Competition Bureau, two FTEs that could be reallocated as direct FTEs to the Wireless Telecommunications Bureau, and one FTE that could be reallocated as a direct FTE to the Media Bureau, proportionally among the fee categories in the Media Bureau.

44. With regard to the two FTEs we propose to consider as direct to the Wireline Competition Bureau, we propose these reallocations for regulatory fee purposes because the burden of the work performed is directly related to the oversight and regulation of wireline regulatory fee payors. This division, in performance of its risk assessment responsibilities, surveys the status of wireline service and infrastructure following major disasters, emergencies, or events of a national security or law enforcement nature and facilitates restoration through coordination with other federal and SLTT entities and private sector companies. In addition, the division administers legal oversight and review of the Commission's Local Number Portability Act (LNPA) activities. Similarly, we propose allocating two FTEs as direct to the Wireless Telecommunications Bureau, for regulatory fee purpose, because the burden of the work performed is directly related to the oversight and regulation of wireless regulatory fee payors based on the same functions described above, with respect to wireline regulatory fee payors.

45. In addition, the work done by one FTE in OEMD directly supports the oversight and regulation of regulatory fee payors of the Media Bureau by conducting site surveys of media broadcast transmitters to determine potential issues of interference, and by deploying personnel to disaster areas to perform spectrum scans before and after disasters to ascertain the operational status of broadcast stations and assist those that are not operational. Deploying personnel to disaster areas primarily supports the oversight and regulation of the regulatory fee payors of all three bureaus by, among other things, providing direct assistance to providers in disaster areas with issues such as obtaining access to facility sites and procurement of fuel for generators. Based on this analysis, we propose to reallocate, for regulatory fee purposes, one FTEs as a direct FTEs to be included in the count of the Media Bureau, proportionally among the fee categories in that bureau. We seek comment on this proposal.

46. The Communications and Crisis Management Center (FCC Operations Center), which is part of OEMD, maintains a 24/7 staff at FCC Headquarters. Its responsibilities include: monitoring the status of communications and engaging in real-time with emergency operations centers and PSAPs in the event of outages or disasters; resolving consumer complaints; supporting the Commission's enforcement activities; granting special temporary authority to Commission licensees after hours; and maintaining the Commission's primary classified environment and the required support systems.

47. The Operations Center is available 24/7 to field requests from all regulatees for assistance and to grant special temporary authority outside of normal business hours. Operations Center staff routinely field calls regarding consumer complaints of communications outages and interference or requests for information on the provision of wireless and wireline communications services in specific regions of the Nation. In response to these communications, Operations Center staff will coordinate solutions across Commission Bureaus and Offices, SLTT stakeholder entities, and private sector companies. After analyzing at a high level data regarding the FTE work performed in the Operations Center, we find that, the work of three of the FTEs of the Operations Center is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau. We propose to consider such work as direct to the relevant bureau for regulatory fee purposes. Specifically, we propose that one FTE could be reallocated for regulatory fee purposes as a direct FTE of the Wireline Competition Bureau, one FTE could be reallocated for regulatory fee purposes as a direct FTE to the Wireless Telecommunications Bureau, and one FTE could be reallocated for regulatory fee purposes as direct to the Media Bureau, proportionally among the fee

categories in that bureau. We seek comment on this proposal.

48. The Cybersecurity and Communications Reliability Division helps ensure that the nation's communications networks are reliable and secure so that the public can communicate, especially during emergencies. This division identifies and promotes network improvements through analysis and investigation of significant communications outages, providing situational awareness of the status of communications infrastructure during times of emergency, administering the Commission's primary advisory committee on communications security and reliability, and rulemakings. Focus areas include emergency communications, such as 911 and wireless emergency alerting, network performance during disasters, and major network outages and threats. This division monitors and analyzes communications network outages to identify trends, assess actions the FCC can take to help prevent and mitigate outages, and where necessary, assist response and recovery activities.

49. The division provides oversight and regulation of the regulatory payors by, among other things, providing situational awareness of the status of communications infrastructure and coordinating requests for assistance during times of emergency. We find, after analyzing the burden of the work done in this division, there are four FTEs that could be reallocated, for regulatory fee purposes, as direct FTEs to the Wireline Competition Bureau because the work being done on wireline network outage reporting, in routine and disaster environments, as well as outages and notifications impacting the 911 and 933 systems, is directly in furtherance of the oversight and regulation of wireline regulatory fee payors We also find that two FTEs can be reallocated, for regulatory fee purposes, to the Wireless Telecommunications Bureau because the work of FTEs being done to administer the Mandatory Disaster Response Initiative to ensure providers of commercial mobile services engage in mutual aid activities during times of emergency, the work of its Federal Advisory Committee on standards and best practices related to 5G deployment, and the work to develop and implement performance standards and accuracy for wireless emergency alerting is directly in furtherance of the oversight and regulation of wireless regulatory fee payors. Finally, the division supports the security of services provided across platforms, in the Commission's Alerting Security docket, and Federal Advisory Committee work on 911 standards and alerting standards, as well as network and supply chain security.

50. In sum, because we are able to determine that some of the work being performed by certain FTEs in PSHSB is directly related to the oversight and regulation of regulatory fee payors in a core bureau, we propose to consider the FTE burden of such work as direct to the relevant bureau(s). Specifically, we propose to reassign a total of nine FTEs as direct FTEs to the Wireline Competition Bureau, 13 FTEs as direct FTEs to the Wireless Telecommunications Bureau, and six FTEs as direct FTEs to the Media Bureau. The reassignment, for regulatory fee purposes, to the Media Bureau would be proportional among the fee categories in the bureau. This is a total of 28 Public Safety and Homeland Security Bureau FTEs reallocated, as direct FTEs, for regulatory fee purposes, in the core bureaus.

51. *Conclusion of the Proposal To Reallocate Certain Indirect FTEs From OEA, OGC, and PSHSB as Direct FTEs to a Relevant Core Bureau.* As represented above, FTE time associated with the proposed reallocations for regulatory fee purposes would be added to the relevant core bureau. Such a reallocation for regulatory fee purposes would result in increasing the number of direct FTEs in a core bureau and reducing the total number of indirect FTEs within the Commission. Because our underlying methodology for calculating regulatory fees does not change, we conclude that our fee regulatory fee calculation continues to be consistent with section 9 of the Communications Act, which requires us to base our methodology on the number of FTEs in calculating regulatory fees. We seek comment on this conclusion.

52. We are mindful that our treatment of FTEs as direct or indirect can change over time based on our evaluation of the FTE burden associated with the Commission's work assignments and the ebbs and flows within industry segments and needs of specific regulatory fee payors. We also emphasize that our proposals to reallocate certain FTEs from indirect to direct proposes a modest change to the percentages of direct FTEs allocated to the core bureaus. This analysis assures us that the Commission's general methodology for establishing regulatory fees has been appropriate. Based on our careful consideration of the record, we seek comment on whether we should, based on a high level evaluation of data gathered by Commission staff as described above, calculate regulatory fees for FY 2023 based on the proposed reallocations, and whether doing so is appropriate and consistent with section 9 of the Communications Act. The table below shows the proposed reallocations of a total of 63 FTEs to each of the core bureaus, as discussed above. Such reallocations, for regulatory fee purposes, would be proportionally distributed within the core bureau. We seek comment on these reallocations.

Core bureau	Number of direct FTEs without indirect FTE reassignments	Percentage	Number of direct FTEs with indirect FTE reassignments	Percentage
International Bureau	28	8.28	+2 from OEA + 1 from OGC Total additional FTEs, +3	7.73
Wireless Telecommunications Bureau	75	22.19	+8 from OEA +2 from OGC +13 from PSHSB Total additional FTEs +23	24.44
Wireline Competition Bureau	120.25	35.57	+13 from OEA +1 from OGC +9 from PSHSB Total additional FTEs +23	35.73

Core bureau	Number of direct FTEs without indirect FTE reassignments	Percentage	Number of direct FTEs with indirect FTE reassignments	Percentage
Media Bureau	116	33.96	+7 from OEA +1 from OGC +6 from PSHSB Total additional FTEs +14	32.10

53. As reflected in the table above, our proposals to reallocate 63 indirect FTEs as direct for regulatory fee purposes will result in a nearly 19% increase in our overall direct FTE count. We make these proposals consistent with our long standing regulatory fee methodology and conclude that our determinations are reasonably accurate for fiscal year 2023. In sum, based on our staff analysis of the activities of the Commission, we tentatively conclude that our proposals for FTE reallocation better reflect the burdens that certain segments of the telecommunications industry impose on the Commission and our workforce, and will allow us to continue to assess and collect regulatory fees to cover the costs of meeting those obligations. We seek comment on our proposals and this tentative conclusion.

54. Our proposals today to reallocate, for regulatory fee purposes, certain indirect FTEs to direct FTEs in a core bureau recognizes and responds to commenters concerns that some work being done in non-core bureaus and offices is done in furtherance of the oversight and regulation of specific regulatory fee payors. We are nonetheless mindful of the fact that FTEs' work in OEA, OGC, and PSHSB can change from year to year and we want to avoid any unplanned shifts in regulatory fees on an annual basis that would undermine the goals of having a fair, administrable, and sustainable program. In evaluating our proposals, we therefore ask commenters to speak to whether the potentially fluctuating nature of this information on an annual basis will negatively impact their ability to predict what their regulatory fee obligations will be each year. Specifically, we seek comment on depth of analysis we should engage in and the frequency of such analysis when making FTE allocation proposals.

2. Treatment of Non-High Cost Universal Service Fund FTEs as Indirect

55. In 2017, the Commission decided to assign as indirect, for regulatory fee purposes, 38 FTEs in the Wireline Competition Bureau who worked on non-high cost programs of the Universal Service Fund. This reallocation was based on the Commission's conclusion that due to changes over time in the universal service fund regulatory landscape, it was no longer appropriate to consider all FTE time spent working on non-high cost universal service issues as Wireline Competition Bureau direct FTEs. In the non-high cost programs, funding eligibility is based on the beneficiary, *i.e.,* a school, a library, a low-income individual or family, or a healthcare provider. While initial programs were focused on wireline services, as the Commission's non-high cost programs have evolved, other providers, like wireless carriers and broadband providers, are also participating in the programs. Additionally, satellite operators, Wi-Fi network installers, and fiber builders may all receive universal service funding through the Commission's non-high cost programs. As Interstate Telecommunications Service Providers (ITSPs) are no longer the sole contributors or beneficiaries of the non-high cost Universal Service Fund programs, the Commission concluded that reallocating the Wireline Competition Bureau FTEs devoted to non-high cost Universal Service Fund programs as indirect FTEs was more consistent with how FTEs working for programs that benefit consumers and the American public are treated elsewhere in the Commission.

56. The Commission explained that such FTE time should be considered indirect because it is not focused specifically on regulatory fee payors of any core bureau. Instead it covers all program participants. In reaching this conclusion, the Commission reasoned that the FTE time devoted to the non-high cost Universal Service Fund issues is not oversight and regulation of a particular category of fee payors as is the case for ITSPs and CMRS providers, but instead is the oversight of several programs with a wide array of beneficiaries and participants. The Commission determined that FTE time spent on non-high cost Universal Service Fund issues is indirect because it would be ''impossible to determine the precise costs attributable to FTEs and the precise benefits flowing from Commission regulation to any one regulatee, let alone a particular cross-section of regulatees or even an entire industry—not to mention the complications associated with regulatees statutorily exempt from paying regulatory fees (such as governmental licensees) and with beneficiaries (such as schools and libraries) that are not regulatees, all of whom nonetheless create costs that must be covered.''

57. In FY 2022, broadcasters raised concerns about the inclusion of payment for these indirect FTEs in their regulatory fees. The Commission took a closer look at the FTE burden associated with these non-high cost Universal Service Fund issues and determined that broadcasters should be excluded from the costs associated with these indirect FTEs. Based on this determination, the costs associated with these indirect FTEs in FY 2022 was apportioned among all other regulatory fee payors. Broadcasters have argued that these indirect FTEs should be treated as direct and allocated across other fee payors but have not identified a methodology for reallocating the FTE burden associated with these programs to the core bureau. For FY 2023, we tentatively conclude that the Commission's FY 2022 reasoning remains sound and the indirect FTE burden associated with these non-high cost Universal Service Fund programs should not be apportioned to broadcasters. We seek comment on this tentative conclusion. We ask any commenters asserting that these indirect FTEs should be reassigned as direct FTEs to a core bureau to provide an explanation of how these FTEs provide a direct benefit to other fee payors.

58. Additionally, our analysis of the FTE burden associated with these non-high cost Universal Service Fund programs reveals that we need to adjust downward the number of indirect FTEs working on the non-high cost Universal Service Fund programs from 38 FTEs in FY 2022 to 23.75 indirect FTEs for FY 2023, a decrease of 14.25 indirect FTEs. We seek comment on allocating, for regulatory fee purposes, these 23.75 Wireline Competition Bureau FTEs as indirect for FY 2023.

3. Other FTE Allocations

59. In conducting our high-level review of FTE time within the various bureaus and offices within the Commission in response to commenters' concerns, we tentatively conclude that FTE time within the International Bureau, the Office of Engineering and Technology, the Enforcement Bureau, and the Consumer and Governmental Affairs Bureau, is appropriately designated as either indirect or direct. We seek comment on these tentative conclusions and our allocation analysis, as discussed below, for each bureau and office.

60. *International Bureau.* The International Bureau had 81 FTEs as of October 1, 2022, and similar to last year, we propose the same allocation of those 81 FTES to be 28 direct FTEs and 53 indirect FTEs for purposes of regulatory fees (prior to adding three FTEs that we are proposing to reallocate for regulatory fee purposes). In 2013, the Commission concluded that the number of direct FTEs engaged in the regulation and oversight of International Bureau licensees should be 28. The Commission reviewed the number of FTEs in the International Bureau each year as part of the annual regulatory fee process, including last year, and found that that number still accurately reflects the number of direct FTEs engaged in the regulation and oversight of International Bureau licensees. Between the Telecommunications and Analysis Division (TAD) and the Satellite Division there are 27 FTEs, and one FTE in the Office of the Bureau Chief (IBFO), that are allocated as direct FTEs. All FTEs in the Global Strategy and Negotiation Division (GSN) are considered indirect FTEs.

61. We have taken a closer look at the indirect FTE time in the International Bureau, which is primarily in GSN. GSN staff represent the Commission in international conferences, meetings, and negotiations, draft written contributions including proposed USA and regional positions, and coordinate Commission preparation for such conferences, meetings, and negotiations with other Bureaus and Offices, and government agencies, as appropriate. In addition, GSN manages Commission participation in the fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute (USTTI) as well as the Commission's International Visitors Program. Under the leadership of the Department of State, staff participate in various international and regional organizations such as the International Telecommunication Union (ITU), the International Maritime Organization, the International Civil Aeronautics Organization, the Organization for Economic Cooperation and Development (OECD), the Asia Pacific Economic Cooperation, and the Inter-American Telecommunication Commission. The ITU has three sectors, radiocommunications (ITU–R), telecommunications standardization (ITU–T), and telecommunications development (ITU–D). GSN staff cover all three sectors, with ITU–R work focused on spectrum allocations and related international regulations governing spectrum use, ITU–T work focused on international standards setting issues, numbering, and related policy issues, and ITU–D work focused on capacity building and digital inclusion. GSN also coordinates cross-border issues with Mexico and Canada that involve a wide range of services, such as maritime, aeronautical, mobile and fixed satellite, broadcasting, mobile, and terrestrial wireless services. In addition, GSN's functions include international broadcasting station licensing and coordination of frequencies for International Broadcast licenses at the ITU. GSN's multilateral and bilateral international work ultimately benefits all fee payors by maintaining and advancing the United States' global leadership and interests, which encompasses, among others, U.S. trade, foreign policy, and national security interests. Insofar as the work of GSN does not benefit a specific fee payor, but rather the government as whole, we continue to conclude the work of its FTEs is appropriately categorized as indirect.

62. In the IBFO and in the IB divisions, a number of FTEs support the various bureau functions involving management and administrative support, such as IT issues, international travels, and other administrative activities. In the IBFO, approximately one FTE can be attributed to overseeing the Satellite Division's activities that directly benefit space and earth stations. Some work in the IBFO and TAD involve coordinating with Executive Branch agencies on issues involving foreign ownership, national security, law enforcement, and cyber security. Most FTE work in the IBFO supports all regulatory fee payors and also supports GSN work. For that reason, we conclude that they should continue to be considered indirect. In addition, not all the Satellite Division work can be attributed directly to a particular category of regulatory fee payor. For example, a number of space related activities indirectly benefit the existing fee categories, including space stations, commercial mobile services, and earth stations. For example, the Satellite Division coordinates with the National Aeronautics and Space Administration (NASA), Federal Aviation Administration (FAA), National Oceanic and Atmospheric Administration (NOAA), State Department on space sustainability, planetary protections, and on leading space innovation. Lastly, the Satellite Division works closely with GSN staff, to help cover certain ITU World Radiocommunications Conference (WRC) agenda items. Based on our review of the FTEs in the International Bureau, we find that the allocation of direct and indirect FTEs should remain the same for FY 2023, *i.e.,* 28 direct and 53 indirect FTEs. We seek comment on this tentative conclusion.

63. Further, we note that, on January 9, 2023, the Commission adopted the *Space Bureau Order,* which among other things, reorganized the International Bureau by establishing a new Space Bureau and a new Office of International Affairs. This reorganization became effective on April 10, 2023. At this time, however, we are not proposing to reallocate any FTEs on the basis of this reorganization. Other than the reallocations we have proposed herein for regulatory fee purposes, the number of direct FTEs working on oversight and regulation of the International Bureau regulatory fee payors therefore remains unchanged for FY 2023. We will revisit the FTE allocations for the Space Bureau, as we do for all the Commission's bureaus and offices, in FY 2024.

64. *Office of Engineering and Technology.* The Office of Engineering and Technology provides engineering and technical expertise to the agency and supports each of the agency's four core bureaus. Part of that office's role is to participate in matters ''not within the jurisdiction of any single bureau'' or ''affecting more than one bureau.'' More specifically, the Office of Engineering and Technology manages the spectrum and maintains the U.S. Table of Frequency Allocations, manages the experimental licensing and equipment authorization programs, regulates the operation of devices on an unlicensed basis, and conducts engineering and technical studies. Each of these functions is broadly applicable and benefits multiple industry sectors, including the broadcasting industry. For example, work in overseeing the equipment authorization program benefits multiple industry sectors partly because many devices that require

authorization, including some broadcast receiving equipment (*e.g.,* smart TVs), operate on several spectrum bands under rules for both licensed services and unlicensed operations.

65. NAB contends that broadcasters' regulatory fees should not include the indirect FTEs in the Office of Engineering and Technology because that office is focused on the use of spectrum on an unlicensed basis, evaluating new radio frequency (RF) devices, and managing the equipment authorization program. According to NAB, these issues have very little to do with broadcasters. In the *FY 2021 Report and Order,* we rejected commenters' proposals that would effectively treat the Office and Engineering and Technology as a core bureau making FTEs who work in that office direct FTEs. At that time, we found that the Office of Engineering and Technology provides engineering and technical expertise to the agency as a whole and supports each of the agency's four core bureaus and for that reason the FTEs were appropriately assigned as indirect.

66. We have taken a closer look at the FTE time in this office and we again conclude that the FTEs in Office of Engineering and Technology are appropriately considered indirect. Our analysis shows that a significant amount of FTE time is devoted to equipment authorization. FTE work in equipment authorization involves not only RF testing of various equipment that uses spectrum on both a licensed and unlicensed basis, but also such functions as management of the equipment authorization system, coordination with Telecommunications Certification Bodies, and rulemaking activities such as updating testing and laboratory certification standards. FTE time to manage the U.S. Table of Frequency Allocations includes activities such as rulemaking and coordination with other federal and international entities, which impacts virtually all spectrum use, including both licensed and experimental use. The work of OET FTEs therefore benefit the work of the Commission as a whole and is not specific to any particular regulatory fee category. As such, the FTE burden associated with such work properly remains allocated as indirect. Other FTE time in OET is spread out among multiple core bureaus within the Commission and its regulatees. For example, users of spectrum on an unlicensed basis includes virtually every American consumer and business, and management of the U.S. Table of Frequency Allocations has the potential to impact every spectrum user, either directly with regard to primary or secondary use, or indirectly such as with regard to emissions from adjacent spectrum bands. Accordingly, we seek comment on our tentative conclusion to continue to assign all of the FTEs in the Office of Engineering and Technology as indirect and to apportion them across the core bureaus.

67. *Enforcement Bureau.* NAB contends that the Enforcement Bureau's Fraud Division, Market Disputes Resolution Division, and Telecommunications Consumers Division all perform work that benefit broadband service providers, cable operators, and telecommunications carriers and broadcasters should not be responsible for these indirect FTEs and they should instead be characterized as direct to certain core bureaus. We have closely analyzed the FTE time in the Enforcement Bureau, not just the divisions NAB selected, and we tentatively conclude that this bureau should continue to be treated as indirect because, as we discuss below, the Enforcement Bureau FTEs enforce the Communications Act and the Commission's rules. The FTE oversight function is focused on the integrity of Commission's rules and ensuring the implementation of the Commission's Act. FTE time devoted to enforcement of the Commission's rules is the epitome of work that benefits the agency as a whole and the American public and we do not believe it would be fair for any one regulatory fee group of payors to shoulder the FTE burden of such work.

68. We disagree with NAB's argument that the FTEs in the Fraud Division should be direct FTEs. This division has primary responsibility for investigating and enforcing the violations of the Communications Act and the Commission's rules and investigates alleged fraudulent receipt of federal funds from the Commission's federal financial aid programs. The division also coordinates with other offices and bureaus within the Commission and with the Office of Inspector General, and other federal and state agencies to maximize enforcement efforts. These issues handled by the Fraud Division are not tied to the oversight and regulation of particular regulatory fee categories. Investigations of fraud may involve voice service providers, but may also focus on entities that are not regulatory fee payors. We seek comment on our tentative conclusion to keep these FTEs as indirect.

69. We disagree with NAB's argument that the FTEs in the Telecommunications Consumers Division should be reassigned as direct. The FTE time devoted to protecting consumers from robocalls is not solely focused on Commission regulatory fee payors, but includes the entities initiating the robocalls and coordination with other agencies. The wireline and wireless voice service providers (regulatory fee payors) are generally not the bad actors targeted in these investigations; although we have recently adopted rules regarding voice service providers that carry illegal robocall traffic. This division conducts investigations of a variety of entities including regulatory fee payors and non-payors. Further, this division investigates manufacturers of equipment as well as telemarketers for practices that harm consumers. Thus, despite NAB's assertion, FTE time in this division is not only focused on regulatory fee payors of the core bureaus but includes non-payors. We seek comment on keeping these FTEs as indirect.

70. In addition to the divisions listed by NAB, we have closely looked at the remaining Enforcement Bureau divisions and we also find that the FTEs are properly assigned as indirect. The Market Disputes Resolution Division handles all formal complaints against common carriers and pole attachment complaints, and this includes entities that use poles that are not regulatory fee payors, such as utilities. The Market Disputes Resolution Division provides an avenue for such parties, not limited to regulatory fee payors, to resolve complaints. We seek comment on maintaining these FTEs as indirect.

71. The Spectrum Enforcement Division conducts investigations and takes enforcement actions against complaints primarily involving wireless equipment matters, such as electronic devices that are advertised, sold, or operated without proper authorization under the Commission's technical rules, *e.g.,* unauthorized drone accessories that could interfere with aviation frequencies. Other investigations involve entities that operate unauthorized wireless services, such as unauthorized satellite transmissions or unlicensed wireless data networks, which could jeopardize government operations and authorized commercial wireless operations. This division also focuses on public safety and technical issues such as jamming devices that threaten cellular networks and GPS, 911 system failures, and other equipment requirements, including labeling requirements and user manual disclosures for radiofrequency devices. The Spectrum Enforcement Division also investigates licensees that fail to comply with the terms of their licenses and widespread interference matters. In

addition, this division provides engineering and technical support to the Enforcement Bureau. FTE time in this division is not solely focused on regulatory fee payors of the core bureaus. For all of these reasons, we find that these FTEs should remain indirect. We seek comment on maintaining these FTEs as indirect.

72. Similarly, we find that the Investigations and Hearings Division FTEs should remain indirect. This division conducts investigations and takes appropriate enforcement action against broadcast licensees, cable operators, DBS operators, wireless licensees, and telecommunications carriers for violations of the Communications Act and Commission rules; oversees the Equal Employment Opportunity compliance of television and radio broadcast licensees, as well as multichannel video programming distributors (MPVDs), such as cable and DBS operators, and satellite radio; investigates and takes appropriate enforcement action for violations of various Commission transparency rules concerning broadband services, cable television, and other communications offerings. This FTE time is spread among all core bureaus as well as entities that are not Commission regulatory fee payors. For this reason, we find that the FTEs in this division should remain indirect.

73. FTE time in the Enforcement Bureau Field Offices is devoted to investigating unauthorized radio stations, among other things. Parties found operating radio stations without FCC authorization will be subject to a variety of enforcement actions including seizure of equipment, imposition of monetary forfeitures, ineligibility to hold any FCC license, and criminal penalties. Such unauthorized radio stations interfere with licensed radio stations and prevent the American public from enjoying the radio station that is unable to broadcast due to such interference. Field offices have other functions, such as on-scene investigations, inspections, and audits; responding to safety of life matters; investigating and resolving individual interference complaints; investigating violations in all licensees and/or operator services; coordinating with local and state public safety entities; and carrying out special priorities of the Commission.

74. After analyzing the FTE time in this bureau, we find that the Enforcement Bureau is appropriately considered an indirect bureau. Accordingly, we tentatively conclude that none of the FTEs in the Enforcement Bureau should be considered for reallocation. We seek comment on this tentative conclusion. As a general matter, investigations are undertaken by Enforcement Bureau staff in the Field offices, and the Fraud, Telecommunications Consumers, Investigations and Hearings, and Spectrum Enforcement Divisions based on complaints and the Commission's decisions on how to allocate investigation resources among various disputes, including those concerning bad actors. Attempting to discern whether the FTE work conducted in general dispute resolution benefits a particular regulatory fee payor would be difficult, time consuming and impractical to administer. Moreover, where the work of the Enforcement Bureau concerns bad actors, it would be particularly unfair to consider the work of resolving such matters as direct to a category of regulatory fee payors. The direct FTE time on which we calculate regulatory fees should not be based on these types of considerations. For example, a decision by the Commission to have the Field offices investigate complaints about unauthorized radio operators should not result in an increase in the AM and FM broadcasters' regulatory fees based on the FTE time in such investigations. An investigation of a fraudulent robocaller should not result in an increase in the wireline or wireless carriers' regulatory fees, due to the fact that the robocalls were made to consumers' phones. This bureau addresses all violations of Commission rules; some of those could be considered fraud or bad actors and others are rule violations or disagreements between parties. As a policy matter, our regulatory fees should not be based on our investigations of generalized disputes or the actions of parties that have violated the Commission's rules. Our regulatory fee calculations are based on the FTEs devoted to oversight and regulation of the regulatory fee payors, and should not be inflated or skewed due to the Commission's focus on investigations and its enforcement of our rules that are related to the telecommunications industry generally or to bad actors within it. We therefore seek comment on our tentative conclusion to maintain all of the Enforcement Bureau FTEs as indirect FTEs.

75. *Consumer and Governmental Affairs Bureau.* Similarly, we propose to continue considering the FTEs in Consumer and Governmental Affairs Bureau as indirect because the work of the FTEs in this bureau, and the oversight and regulation by these FTEs, is primarily devoted to outreach and consumer matters and enforcing the Act and the Commission's rules. FTE time devoted to regulatory fee payors is often either spent on complaints or petitions for declaratory rulings or on oversight more generally of the industry, *e.g.,* establishing and oversight of the Reassigned Numbers Database. As we explained with respect to Enforcement Bureau FTEs, our regulatory fees should not be based on the volume of complaints or petitions for declaratory rulemakings and the Commission's discretion in allocating resources to handling such matters. Thus, we tentatively conclude that none of the FTEs in the Consumer and Government Affairs Bureau should be considered for reallocation as direct FTEs. We therefore seek comment on our tentative conclusion to maintain the Consumer and Governmental Affairs Bureau FTEs as indirect.

4. Broadcast Regulatory Fees

a. Broadcast Television Stations

76. In the *FY 2020 Report and Order,* we completed the transition to a population-based full-service broadcast television regulatory fee. The population-based methodology conforms with the service authorized here—broadcasting television to the American people. For FY 2023, we propose to continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast television station's contour. We seek comment on our mechanism, described below, for how we will calculate the regulatory fee based on the previously decided population-based methodology. We propose adopting a factor of .7799 of one cent ($.007799) per population served for FY 2023 full-power broadcast television station fees. The population data for broadcasters' service areas are determined using the TVStudy software and the LMS database, based on a station's projected noise-limited service contour. The population data for each licensee and the population-based fee (population multiplied by $.007799) for each full-power broadcast television station is listed in Table 7. We seek comment on these proposed fees.

b. Broadcast Radio Stations

77. For the last several years, broadcaster groups have consistently filed comments in the Commission's annual regulatory fee proceedings about the impact of increasing regulatory fees on small independent broadcasters' ability to continue to provide service to their local communities. Among other factors, they cite competition from

satellite radio and music streaming services, a shrinking advertising base and their inability to pass regulatory fee increases on to a subscriber base. We share the broadcasters' concern that market pressures are significant and, as currently structured, we risk that our fee schedule results in those that are least able to pay regulatory fees overpaying their share of fees, to the benefit of broadcasters with a larger population base. We have reviewed the existing tiered fee structure on which we base our calculation of annual regulatory fees for radio broadcasters and have concluded that creating an additional tier within the lowest population tier is necessary to ensure that broadcaster fees are more equitably distributed among all radio broadcasters and that the regulatory fees assessed to the smaller broadcasters are ''reasonably related to the benefits provided to the payor of the fee by the Commission's activities'' as required by section 9(d) of the Act. To that end, we propose a revised radio station regulatory fee table that would include a lower population tier for AM and FM broadcasters. Specifically, we propose to separate the previous years' tier of <= 25,000 population into two tiers: (1) ≤= 10,000, and (2) 10,001–25,000. Under our proposal, the remaining population tier thresholds would stay the same as prior years. We seek comment on the table below.

FY 2023 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=10,000	$595	$430	$370	$410	$650	$745
10,001–25,000	990	715	620	680	1,085	1,240
25,001–75,000	1,485	1,075	930	1,020	1,630	1,860
75,001–150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001–500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001–1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001–3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001–6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
>6,000,000	16,920	12,220	10,595	11,620	18,545	21,190

5. Space Station Regulatory Fees

78. We seek comment on the proposed regulatory fees for space stations as provided in Table 2. In 2020, the Commission adjusted the allocation of FTEs among geostationary orbit space stations (GSO) and non-geostationary orbit satellite systems (NGSO) operators. To ensure that regulatory fees more closely reflected the FTE oversight and regulation for each space station category, the Commission allocated 80% of space station regulatory fees to GSOs and 20% of the space station regulatory fees to NGSOs. We also seek comment on defining the category of operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) for regulatory fee purposes, including whether a separate regulatory fee category is necessary. In addition, we seek comment on how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc.

79. In 2021, the Commission adopted two new fee subcategories: ''less complex'' NGSO systems and all other NGSO systems identified as ''other'' NGSO systems, both under the broader category of ''Space Stations (Non-Geostationary Orbit).'' ''Less complex'' NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS). ''Less complex'' NGSO fees and ''other'' NGSO fees were split within the broader NGSO fee category on a 20/80 basis. For FY 2023, we calculate the fees using the allocation of 80% of space station regulatory fees to GSOs and 20% of the space station regulatory fees to NGSOs. We also use the 20/80 allocation between ''less complex'' and ''other'' NGSO space station fees, respectively, within the NGSO fee category. Such allocations still accurately reflect the amount of work involved in regulating NGSO systems and the number of reasonably related benefits provided to the payors of each fee category.

80. In the Report and Order attached to the *FY 2022 NPRM,* we adopted a methodology for calculating the regulatory fee for small satellites and small spacecraft (together, small satellites) within the NGSO fee category based on 1/20th (5%) of the average of the non-small satellite NGSO space station regulatory fee rates from the current fiscal year on a per license basis. This methodology accommodates fluctuations in the number of NGSO space stations fee payors, continues to provide a middle ground and an opportunity to gain more experience in regulating small satellites, and reflects that FTEs spend approximately twenty times more time on regulating one non-small satellite NGSO system compared to the time spent for regulating one small satellite license.

81. Accordingly, in Tables 2 and 3, we have included the proposed fees for NGSO space stations calculated by assessing the fees that small satellites will pay in FY 2023, reducing that amount from the overall NGSO space stations fee category, and allocating the remaining NGSO space station fees 20/80 using the two fee subcategories: ''less complex'' NGSO space stations and all other NGSO space stations identified as ''other'' NGSO space stations. In Tables 2 and 3, we also propose fees for GSO space stations. We seek comment on these proposed fees.

82. *Spacecraft Performing On-Orbit Servicing (OOS) and Rendezvous and Proximity Operations (RPO).* In the *FY 2022 NPRM,* we sought comment on adopting regulatory fee categories for spacecraft performing OOS and RPO. Missions, which can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space, have the potential to benefit all space stations and improve the sustainability of the outer space environment and the space-based services. Due to the somewhat nascent nature of the OOS and RPO, or more generally ''in-space servicing'' industries, we currently do not have a regulatory fee category for such spacecraft. We noted in the *FY 2022 NPRM* that there have been a limited number of such operations. We tentatively concluded at that time that it was too early to identify exactly where operations, such as those in low-Earth orbit (LEO), might fit into the regulatory

fee structure in the future. We accordingly deferred our determination of whether to create a new fee category for such services to a future fiscal year once the regulatory framework under which space stations performing in-space servicing operations, including OOS, RPO, space situational awareness (SSA), and space domain awareness (SDA) operations, and the scope of those operations, is better understood.

83. Since the *FY 2022 NPRM,* neither the scope of in-space servicing operations nor the regulatory framework has developed sufficiently to adopt regulatory fee categories at this time. For example, although we expect that most of these operations are likely to ultimately be in NGSO, there will not be any operational OOS or RPO spacecraft in NGSO for FY 2023. For those spacecraft that may conduct such in-space servicing operations in the future, we seek further comment on defining this emerging category of operations for regulatory fee purposes, including whether a separate regulatory fee category is necessary. In response to our *FY 2022 NPRM,* three commenters supported the creation of a new fee category. Of those commenters, one suggested that we use the term ''in-space servicing'' to define services that will fit within the category to correlate the language with the In-Space Servicing, Assembly, and Manufacturing (ISAM) National Strategy and define those services as activities in space ''by a servicer spacecraft or servicing agent on a client space object which require rendezvous and/or proximity operations.'' Another commenter suggested a definition for OOS missions as spacecraft whose ''primary function'' is to provide OOS, including concepts of operations such as deployment via orbital transfer vehicle (OTV), hosting, or RPO, and another agreed with such a definition and added that SSA and SDA operations should also be included. We seek comment on these and additional or different definitions for a potential new fee category. Commenters that favor a new fee category or categories should fully explain the basis for their positions, including how the Commission might identify where these operations might fit into the existing regulatory fee structure and why these operations are distinct from operations classified under other fee categories.

84. Some spacecraft conducting satellite servicing have or plan to operate near the GSO arc. To date, we have licensed two spacecraft under part 25 for communications while conducting these types of operations with GSO satellites. These two spacecraft remain operational in FY 2023. Based on our review and experience regulating OOS and RPO spacecraft in GSO, we tentatively conclude that, despite being assigned their own call signs, which is the unit usually used to assess fees for satellite regulatees operating in GSO, such spacecraft appear to operate as part of existing GSO systems, rather than as separate independent spacecraft. Under this tentative conclusion, there is no independent system for a separate fee assessment for these operations near the GSO arc, and the regulatory burden for such operations are included in the fees collected from the regulatory fee payors paying fees for GSO satellites. We seek comment on this tentative conclusion and whether our experience to date may not apply to future operations of OOS and RPO spacecraft, which may operate more independently of the satellites that they will service. For spacecraft conducting OOS and RPO with GSO satellites, identifying whether such spacecraft operations are part of an existing GSO system appears to be the first step in determining whether we should assess a separate fee. We propose to apply the regulatory fee for ''Space Stations (Geostationary Orbit)'' to OOS and RPO spacecraft operating near the GSO arc, unless we determine that the OOS or RPO spacecraft is operating as part of an existing GSO system and therefore should not be assessed a separate regulatory fee. We seek comment on this approach, as well as on the specific factors that we should consider to determine whether a OOS or RPO spacecraft will operate as part of an existing GSO system for regulatory fee purposes.

6. Digital Equity and Inclusion

85. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals for collecting regulatory fees for FY 2023 may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority. We note that diversity and equity considerations, however, do not allow the Commission to shift fees from one party of fee payors to another nor to fees under section 9 of the Act for any purpose other than as an offsetting collection in the amount of our annual S&E appropriation.

7. Continuing Flexibility in FY 2023 for Regulatory Fee Payors

86. In FY 2020, the Commission adopted several temporary measures to assist parties experiencing COVID–19 -related financial hardship in seeking regulatory fee relief. The Commission found good cause to continue the temporary measures in FY 2021 and FY 2022. The measures included: (i) waiver of section 1.1166(a) of the Commission's rules to permit parties seeking regulatory fee waiver, reduction and/or deferral for financial hardship reasons to make a single request for all forms of relief sought, rather than requiring separate filings for each form of relief; (ii) waiver of section 1.1166(a) to permit requests to be submitted electronically to a dedicated email address, rather than requiring the requests to be filed in paper form with the Commission's Office of Secretary; and (iii) allowing parties seeking installment payment terms to do so by submitting their requests to the same dedicated email address and to combine their installment payment requests with their waiver, reduction, and/or deferral requests in a single filing.

87. The Commission also reduced the interest rate typically charged on installment payments to a nominal rate and waived the down payment normally required before granting an installment payment request. In addition, the Commission partially waived the requirement that parties seeking relief on financial hardship grounds submit with their requests all financial documentation needed to prove financial hardship. This allowed regulatory fee payors experiencing pandemic-related financial hardship to submit additional financial documentation post-filing if necessary to determine whether relief should be granted. The Commission directed the Managing Director to work with individual regulatory fee payors that filed requests if additional documents were needed to render a decision on the request.

88. Finally, the Commission allowed debtors barred from filing requests or applications by the Commission's red-light rule and experiencing pandemic-related financial hardship to nonetheless request relief with respect to their regulatory fees. The Commission authorized the Managing Director to partially waive the red light to permit consideration of those requests while requiring those parties to resolve all

delinquent debt to the Commission's satisfaction in the process.

89. We seek comment on whether any of the remaining temporary measures described in paragraphs 87 and 88 above should be extended for FY 2023, and if so, why? Specifically, for FY 2023, should the Commission continue to offer a reduced interest rate and waive the down payment for installment payments of regulatory fees? Should we continue our partial waiver of the red light rule to permit delinquent debtors to seek fee relief, conditioned on the debtor's satisfactory resolution of its delinquent debt? Finally, should the Commission continue our partial waiver of section 1.1166 to permit a regulatee to submit financial documentation after its request is filed if the Managing Director determines that additional documents are needed to render a decision on the request? Commenters that support extension of any of these temporary measures should explain why extension of any temporary measure is necessary, and in the case of those temporary measures that require a waiver of a Commission rule, why good cause exists for the waiver and why the waiver is in the public interest. We remind commenters that we cannot relax the standard for granting a waiver or deferral of fees, penalties, or other charges for late payment of regulatory fees under section 9A of the Communications Act. Under that statute, the Commission may only waive a regulatory fee, penalty or interest if it finds there is good cause for the waiver and that the waiver is in the public interest. The Commission has only granted financial hardship waivers when the requesting party has shown it ''lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.'' Other statutory limitations include that the Commission must act on waiver requests individually, and cannot extend the deadline we set for payment of fees beyond September 30.

8. Providing Installment Payment Relief to Small Regulatory Fee Payors

90. Several broadcaster groups request that the Commission allow regulatees to prepay their annual regulatory fees in installments, including by prepaying their annual regulatory fees in increments before the annual regulatory fee payment deadline. The broadcasters state that this and other measures would assist in lessening the broadcasters' regulatory fee burden.

91. We start by reminding regulatory fee payors that the Commission has had a robust installment payment program in place for many years, and that many fee payors, especially small fee payors, have availed themselves of the relief installment payment plans provide, enabling repayment of the annual regulatory fee in installments after the payment deadline, without incurring a 25% late payment penalty. The Commission's existing installment payment program operates pursuant to the requirements of section 901.8 of the Federal Claims Collection Standards (FCCS), which permits installment payment of monies owed to the United States after the due date, where a debtor demonstrates that it is financially unable to pay its fees in lump sum by the due date. While the Commission does not have the authority to waive the required showing of financial inability to pay in lump sum, the Commission has discretion in setting the interest rate to be charged under an installment payment agreement and other repayment terms. In response to the economic effects of the COVID–19 pandemic, in FYs 2020, 2021, and 2022, the Commission substantially reduced the interest rate it customarily charges on installment payment of regulatory fees to a nominal rate and waived its standard down payment requirement, and in this proceeding, is seeking comment on whether to extend those measures in FY 2023. We seek comment on whether the Commission should consider other temporary or permanent modifications to its existing installment payment program, bearing in mind the constraints of section 901.8 of the FCCS.

92. We also seek comment on the broadcasters proposal that they be permitted to prepay their annual regulatory fees in increments, in advance of the annual regulatory fee date. We note here that the Communications Act has long required the Commission to permit installment payment of large regulatory fees. The Commission has historically interpreted this requirement to mean that large fee payors should be permitted to pay their fees in installments between the time the annual fee amount is established and the annual deadline for paying the fee, making its implementation impractical. We seek comment on whether we should permit prepayment in increments in advance of the release of the annual report and order establishing the fee amounts, and if so, how would such a program work? For instance, how would the regulatory fee payor determine the amount to be prepaid, given that the regulatory fee will not have been established until most, if not all, of the prepayments are made? How would we structure the prepayment terms, for instance, the frequency and size of each prepayment? Would the prepayment option be available to all regulatory fee payors or only certain payors, and if the latter, what criteria would we use to determine eligibility to prepay?

93. Implementation of such a program, particularly if the eligible pool of regulatory fee payors is a large one, would likely require modifications to our recordkeeping, financial operations and accounting systems, as well as additional personnel to administer the program. What concrete benefits would the Commission and its participating regulatees derive from such a program? For instance, if we assume that the principal benefit to a regulatee of prepaying its regulatory fees in increments is in the ability to budget and plan the expenditure, would prepayment in installments be significantly more beneficial than a regulatee regularly setting aside an amount equivalent to the prepayment it would make, in order to pay its upcoming regulatory fee obligation when due and if so, how would it be more beneficial? Would the program's benefit to regulatees justify the Commission's cost of implementing and administering a prepayment by installment program and if so, how?

9. Other Forms of Assistance

94. We seek comment on other ways in which the Commission might assist regulatory fee payors, including small entities such as broadcasters, in meeting their annual regulatory fee obligations. We ask that commenters explain the legal bases for any proposals they make and how such proposals fit within the Commission's statutory authorizations and our existing regulatory fee methodology.

10. New Regulatory Fee Categories

95. Finally, we continue to seek additional comment on ''whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service.

IV. Procedural Matters

96. Included below are procedural items as well as our current payment and collection methods. We include these payments and collection procedures here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

97. *Credit Card Transaction Levels.* In accordance with *Treasury Financial Manual,* Volume I, Part 5, Chapter 7000, Section 7045—*Limitations on Card Collection Transactions,* the highest

amount that can be charged on a credit card for transactions with federal agencies is $24,999.99. Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, Automates Clearing House (ACH) debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in CORES. Further details will be provided regarding payment methods and procedures at the time of FY 2023 regulatory fee collection in Fact Sheets, *https://www.fcc.gov/regfees.*

98. Payment Methods. During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through *Pay.gov*, ACH, debit card, or by wire transfer. Additional payment instructions are posted on the Commission's website at *https://www.fcc.gov/licensing-databases/fees/wire-transfer.* The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, an FCC Form 159–E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Commission at (202) 418–2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *https://www.fcc.gov/licensing-databases/fees/wire-transfer.*

99. *Standard Fee Calculations and Payment Dates.* The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2022 for AM/FM radio stations, VHF/UHF broadcast television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2022.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category. For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in section 52.103 of the Commission's rules. The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2022.
- *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2022. The number of subscribers, units, or telephone numbers on December 31, 2021 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services, Multi-year fees:* The first eight regulatory fee categories in our Schedule of Regulatory Fees (first seven in our Calculation of Fees in Table 2) pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2023.
- *Multichannel Video Programming Distributor (MVPD) Services (cable television operators, Cable Television Relay Service (CARS) licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2022. Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services:* Regulatory fees must be paid for earth stations that were licensed (or authorized) on or before October 1, 2022. Regulatory fees must also be paid for Geostationary orbit space stations (GSO) and non-geostationary orbit satellite systems (NGSO), and the two NGSO subcategories ''Other'' and ''Less Complex,'' that were licensed and operational on or before October 1, 2022. Licensees of small satellites that were licensed and operational on or before October 1, 2022 must also pay regulatory fees. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services (Submarine Cable Systems, Terrestrial and Satellite Services):* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2022. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2022, in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, ''active circuits'' include backup and redundant circuits as of December 31, 2022. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.

100. *CMRS and Mobile Services Assessments.* The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''). We have included non-geographic numbers

in the calculation of the number of subscribers for each CMRS provider in Table 2 and the CMRS regulatory fee factor proposed in Table 3. CMRS provider regulatory fees will be calculated and should be paid based on the inclusion of non-geographic numbers. CMRS providers can adjust the total number of subscribers, if needed. This information of telephone numbers (subscriber count) will be posted on the Commission's Registration System (CORES) along with the carrier's Operating Company Numbers (OCNs).

101. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing CORES and following the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation. The Commission will then review the revised count and supporting explanation, if any, and either approve or disapprove the submission in CORES. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide supporting documentation. If the Commission receives no response from the provider, or the Commission does not reverse its initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in CORES. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in CORES.

102. Because some carriers do not file the NRUF report, they may not see their telephone number counts in CORES. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.,* compute their telephone number counts as of December 31, 2022), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in CORES or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

V. List of Tables

TABLE 1—COMMENTS AND REPLY COMMENTS TO THE FY 2022 NOTICE OF INQUIRY, MD DOCKET NO. 22–301

Commenter	Abbreviated name	Date filed
Comments to NOI		
ACA Connects—America's Communications Association	ACA Connects	10/26/22
National Association of Broadcasters	NAB	10/26/22
Satellite Industry Association; SIA Executive Members include: Amazon; The Boeing Company; DIRECTV; EchoStar Corporation; HawkEye 360; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; Ligado Networks; Lockheed Martin Corporation; Northrop Grumman; OneWeb; Planet; SES Americom, Inc.; Space Exploration Technologies Corp.; Spire Global Inc.; and Viasat Inc. SIA Associate Members include: ABS US Corp.; The Aerospace Corporation; Artel, LLC; AST & Science; Astranis Space Technologies Corp.; Aurora Insight; Blue Origin; Comtech Telecommunications Corp.; Eutelsat America Corp.; ExoAnalytic Solutions; Hughes Defense and Intelligence Systems Division/Government Solutions; Inmarsat; Kymeta Corporation; Leonardo; Lynk; Omnispace, LLC; OneWeb Technologies; Ovzon; Panasonic Avionics Corporation; Telesat; United Launch Alliance; and XTAR, LLC.	SIA	10/26/22
Reply Comments to NOI		
Reply commenter	Abbreviated name	Date filed
AGM CALIFORNIA, INC		
AGM NEVADA, LLC		
ALABAMA MEDIA, LLC		
COXSWAIN MEDIA, LLC		
DAVIS BROADCASTING, INC. OF COLUMBUS		
EQUITY COMMUNICATIONS, LP		
FLORIDA KEYS MEDIA, LLC		
GALAXY SYRACUSE LICENSEE LLC GALAXY UTICA LICENSEE LLC		
GOLDEN ISLES BROADCASTING, LLC		
GOOD KARMA BRANDS MILWAUKEE, LLC		
GOOD KARMA BROADCASTING, LLC		
GULF SOUTH RADIO, INC		
HANCOCK COMMUNICATIONS, INC		
HEH COMMUNICATIONS, LLC		
HOLLADAY BROADCASTING OF LOUISIANA, LLC		
INLAND EMPIRE BROADCASTING CORP. JAM COMMUNICATIONS, INC		
KLAX LICENSING, INC		
KLOS RADIO HOLDINGS, LLC		
KPWR RADIO HOLDINGS, LLC		
KRZZ LICENSING, INC		
KWHY–22 BROADCASTING, LLC		
KXOL LICENSING, INC		
KXOS RADIO HOLDINGS, LLC.		

TABLE 1—COMMENTS AND REPLY COMMENTS TO THE FY 2022 NOTICE OF INQUIRY, MD DOCKET NO. 22–301—Continued

Commenter	Abbreviated name	Date filed
L.M. COMMUNICATIONS, INC L.M. COMMUNICATIONS OF KENTUCKY, LLC L.M. COMMUNICATIONS OF SOUTH CAROLINA, INC L.M.N.O.C. BROADCASTING LLC MERIDIAN MEDIA GROUP, LLC MERUELO RADIO HOLDINGS, LLC MISSISSIPPI BROADCASTERS, LLC NEW SOUTH RADIO, INC NORTHWAY BROADCASTING, LLC PARTNERSHIP RADIO, LLC PATHFINDER COMMUNICATIONS CORPORATION QBS BROADCASTING, LLC REGIONAL RADIO GROUP, LLC SBR BROADCASTING CORPORATION SERGE MARTIN ENTERPRISES, INC. SPANISH BROADCASTING SYSTEM HOLDING COMPANY, INC. TALKING STICK COMMUNICATIONS, L.L.C THE CROMWELL GROUP, INC. OF ILLINOIS WCMQ LICENSING, INC WCYQ, INC. WINTON ROAD BROADCASTING CO., LLC WKLC, INC. WLEY LICENSING, INC WMEG LICENSING, INC WPAT LICENSING, INC. WPYO LICENSING, INC WRMA LICENSING, INC WRXD LICENSING, INC WSBS LICENSING, INC WSKQ LICENSING, INC WSUN LICENSING, INC WXDJ LICENSING, INC	Joint Commenters	11/23/22
National Association of Broadcasters	NAB	11/25/22
NCTA—The Internet & Television Association	NCTA	11/25/22
WISPA—*Broadband Without Boundaries*	WISPA	11/25/22
Alabama Broadcasters Association; Alaska Broadcasters Association; Arizona Broadcasters Association; Arkansas Broadcasters Association; California Broadcasters Association; Colorado Broadcasters Association; Connecticut Broadcasters Association; Florida Association of Broadcasters; Georgia Association of Broadcasters; Hawaii Association of Broadcasters; Idaho State Broadcasters Association; Illinois Broadcasters Association; Indiana Broadcasters Association; Iowa Broadcasters Association; Kansas Association of Broadcasters; Kentucky Broadcasters Association; Louisiana Association of Broadcasters; Maine Association of Broadcasters; MD/DC/DE Broadcasters Association; Massachusetts Broadcasters Association; Michigan Association of Broadcasters; Minnesota Broadcasters Association; Mississippi Association of Broadcasters; Missouri Broadcasters Association; Montana Broadcasters Association; Nebraska Broadcasters Association; Nevada Broadcasters Association; New Hampshire Association of Broadcasters; New Jersey Broadcasters Association; New Mexico Broadcasters Association; The New York State Broadcasters Association; Inc., North Carolina Association of Broadcasters; North Dakota Broadcasters Association; Ohio Association of Broadcasters; Oklahoma Association of Broadcasters; Oregon Association of Broadcasters; Pennsylvania Association of Broadcasters; Radio Broadcasters Association of Puerto Rico; Rhode Island Broadcasters Association; South Carolina Broadcasters Association; South Dakota Broadcasters Association; Tennessee Association of Broadcasters; Texas Association of Broadcasters; Utah Broadcasters Association; Vermont Association of Broadcasters; Virginia Association of Broadcasters; Washington State Association of Broadcasters; West Virginia Broadcasters Association; Wisconsin Broadcasters Association; and Wyoming Association of Broadcasters.	State Associations	11/25/22
CTIA	CTIA	11/25/22

TABLE 2—CALCULATION OF FY 2023 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	FY 2023 payment units	Yrs	FY 2022 revenue estimate	Pro-rated FY 2023 revenue requirement	Computed FY 2023 regulatory fee	Rounded FY 2023 reg. fee	Expected FY 2023 revenue
PLMRS (Exclusive Use)	1,200	10	187,500	300,000	25.00	25	300,000
PLMRS (Shared use)	19,000	10	1,250,000	1,900,000	10.00	10	1,900,000
Microwave	16,000	10	4,500,000	4,000,000	25.00	25	4,000,000
Marine (Ship)	7,000	10	1,035,000	1,050,000	15.00	15	1,050,000
Aviation (Aircraft)	4,800	10	420,000	480,000	10.00	10	480,000
Marine (Coast)	240	10	84,000	96,000	40.00	40	96,000
Aviation (Ground)	300	10	70,000	60,000	20.00	20	60,000
AM Class A [1]	60	1	326,740	290,040	4,834	4,835	290,100

TABLE 2—CALCULATION OF FY 2023 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	FY 2023 payment units	Yrs	FY 2022 revenue estimate	Pro-rated FY 2023 revenue requirement	Computed FY 2023 regulatory fee	Rounded FY 2023 reg. fee	Expected FY 2023 revenue
AM Class B[1]	1,403	1	4,054,050	3,598,533	2,565	2,565	3,598,695
AM Class C[1]	814	1	1,450,360	1,288,345	1,583	1,585	1,290,190
AM Class D[1]	1,373	1	4,793,460	4,256,627	3,100	3,100	4,256,300
FM Classes A, B1 & C3[1]	3,043	1	10,109,400	8,977,008	2,950	2,950	8,976,850
FM Classes B, C, C0, C1 & C2[1]	3,111	1	12,378,460	10,992,387	3,533	3,535	10,997,385
AM Construction Permits[2]	5	1	3,450	3,100	620	620	3,100
FM Construction Permits[2]	16	1	19,360	17,360	1,085	1,085	17,360
Digital Television[5] (including Satellite TV)	3.265 billion population	1	28,897,591	25,463,155	.00779893	.007799	25,463,387
Digital TV Construction Permits[2]	4	1	20,840	20,400	5,100	5,100	20,400
LPTV/Class A/Translators FM Trans/Boosters	6,325	1	1,858,440	1,647,933	261	260	1,644,500
CARS Stations	120	1	230,175	208,818	1,740	1,740	208,800
Cable TV Systems, including IPTV & DBS	56,000,000	1	76,475,000	69,369,400	1.2387	1.24	69,440,000
Interstate Telecommunication Service Providers	26,100,000,000	1	124,597,500	134,784,350	0.005164	0.00516	134,676,000
Toll Free Numbers	34,500,000	1	4,164,000	4,631,251	0.1342	0.13	4,485,000
CMRS Mobile Services (Cellular/Public Mobile)	545,000,000	1	74,900,000	86,287,694	0.1583	0.16	87,200,000
CMRS Messaging Services	1,300,000	1	120,000	104,000	0.0800	0.080	104,000
BRS/[3]	1,195	1	716,625	836,500	700	700	836,500
LMDS	360	1	204,750	252,000	700	700	252,000
Per Gbps circuit Int'l Bearer Circuits Terrestrial (Common & Non-Common) & Satellite (Common & Non-Common)	17,000	1	468,000	430,862	25.34	25	425,000
Submarine Cable Providers (See chart at bottom of Table 3)[4]	67.00	1	8,822,138	8,186,376	122,185	122,185	8,186,395
Earth Stations	2,900	1	1,783,500	1,658,901	572	570	1,653,000
Space Stations (Geostationary)	139	1	17,143,565	15,908,562	117,841	117,840	15,908,400
Space Stations (Non-Geostationary, Other)	9	1	3,380,200	3,114,764	346,085	346,085	3,114,765
Space Stations (Non-Geostationary, Less Complex)	6	1	845,040	778,691	129,782	129,780	778,680
Space Stations (Non-Geostationary, Small Satellite)	5	1	60,725	83,685	11,955	11,955	83,685
****** Total Estimated Revenue to be Collected			385,369,869	389,887,198			391,796,260
****** Total Revenue Requirement			381,950,000	390,192,000			390,192,000
Difference			3,419,869	(304,802)			1,604,260

[1] The fee amounts listed in the column entitled ''Rounded New FY 2023 Regulatory Fee'' constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2023 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 3.

[2] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service based on the threshold 10,001–25,000, the traditional basis for identifying the lowest licensed fee. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[3] The MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[4] The chart at the end of Table 3 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009). The Submarine Cable fee in Table 2 is a weighted average of the various fee payers in the chart at the end of Table 3.

[5] The actual digital television regulatory fees to be paid by call sign are identified in Table 7.

TABLE 3—FY 2023 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual Regulatory Fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers)	.16
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	700
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	700
AM Radio Construction Permits	620
FM Radio Construction Permits	1,085
AM and FM Broadcast Radio Station Fees	See Table Below
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	.007799
	See Table 7 for fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees*
Digital TV Construction Permits	5,100
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	260
CARS (47 CFR part 78)	1,740
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.24
Interstate Telecommunication Service Providers (per revenue dollar)	.00516
Toll Free (per toll free subscriber) (47 CFR section 52.101(f) of the rules)	.13
Earth Stations (47 CFR part 25)	570
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	117,840
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	346,085
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	129,780
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	11,955
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	25
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2023 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=10,000	$595	$430	$370	$410	$650	$745
10,001–25,000	990	715	620	680	1,085	1,240
25,001–75,000	1,485	1,075	930	1,020	1,630	1,860
75,001–150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001–500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001–1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001–3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001–6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
>6,000,000	16,920	12,220	10,595	11,620	18,545	21,190

FY 2023 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2022)	Fee ratio	FY 2023 regulatory fees
Less than 50 Gbps	.0625 Units	$7,640
50 Gbps or greater, but less than 250 Gbps	.125 Units	15,275
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	30,550
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	61,095
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	122,185
6,500 Gbps or greater	2.0 Units	244,370

Table 4—Sources of Payment Unit Estimates for FY 2023

In order to calculate individual service fees for FY 2023, we adjusted FY 2022 payment units for each service to more accurately reflect expected FY 2023 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, where available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.* Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term ''units'' reflect licenses or permits that have been issued, but for other fee categories, the term ''units'' reflect quantities such as subscribers, population counts, circuit counts, telephone numbers, and revenues. As more current data is received after the *Notice of Proposed Rulemaking (NPRM)* is released, the Commission sometimes adjusts the NPRM fee rates to reflect the new information in the *Report and Order.* This is intended to make sure that the fee rates in the *Report and Order* reflect more recent and accurate information. We realize that by adjusting the unit counts as more accurate information is received may adjust the fee rates for certain regulatory fee categories. Certain entities that collect the fees from customers in advance in order to pay the Commission, such as Cable and DBS companies, ITSP providers, Cell Phone and Toll-Free providers, to name a few, may need to adjust their billings to customers as the Commission adjusts its fee rates. As a result, the Commission understands that these adjustments are necessary so that these regulatees can recover their fee obligations from their customers.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2023 estimates with actual FY 2022 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2023 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2023 payment units are based on FY 2022 actual payment units, it does not necessarily mean that our FY 2023 projection is exactly the same number as in FY 2022. We have either rounded the FY 2023 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) information as well as prior year payment information. Estimates have been adjusted to take into consideration the licensing of portions of these services.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2022 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2022 payment data.
AM/FM Radio Stations	Based on downloaded LMS data, adjusted for exemptions, and actual FY 2022 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.
AM/FM/TV Construction Permits	Based on LMS data, adjusted for exemptions, and actual FY 2022 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on LMS data, adjusted for exemptions, and actual FY 2022 payment units.
BRS (formerly MDS/MMDS) LMDS	Based on WTB reports and actual FY 2022 payment units. Based on WTB reports and actual FY 2022 payment units.
Cable Television Relay Service (CARS) Stations.	Based on cable trend data, data from the Media Bureau's COALS database, and actual FY 2022 payment units.
Cable Television System Subscribers, Including IPTV Subscribers.	Based on publicly available data sources for estimated subscriber counts, trend information from past payment data, and actual FY 2022 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–A worksheets due in April 2023, and any data provided by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau licensing data and actual FY 2022 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau data reports and actual FY 2022 payment units.
International Bearer Circuits	Based on assistance provided by the International Bureau, any data submissions by licensees, adjusted as necessary, and actual FY 2022 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2022 payment units.

Table 5—Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a

geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 6—SATELLITE CHARTS FOR FY 2023 REGULATORY FEES—U.S.-LICENSED SPACE STATIONS

Licensee	Call sign	Satellite name	Type
DIRECTV Enterprises, LLC	S2922	SKY–B1	GSO
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO
DIRECTV Enterprises, LLC	S2711	DIRECTV RB–1	GSO
DIRECTV Enterprises, LLC	S2632	DIRECTV T8	GSO
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO
DISH Operating L.L.C	S2931	ECHOSTAR 18	GSO
DISH Operating L.L.C	S2738	ECHOSTAR 11	GSO
DISH Operating L.L.C	S2694	ECHOSTAR 10	GSO
DISH Operating L.L.C	S2740	ECHOSTAR 7	GSO
DISH Operating L.L.C	S2790	ECHOSTAR 14	GSO
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO
EchoStar Satellite Services L.L.C	S2179	ECHOSTAR 9	GSO
ES 172 LLC	S2610	EUTELSAT 174A	GSO
ES 172 LLC	S3021	EUTELSAT 172B	GSO
Horizon-3 Satellite LLC	S2947	HORIZONS–3e	GSO
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO
Intelsat License LLC/ViaSat, Inc	S2160	GALAXY 28	GSO
Intelsat License LLC	S2414	INTELSAT 10–02	GSO
Intelsat License LLC	S2972	INTELSAT 37e	GSO
Intelsat License LLC	S2854	NSS–7	GSO
Intelsat License LLC	S2409	INELSAT 905	GSO
Intelsat License LLC	S2405	INTELSAT 901	GSO
Intelsat License LLC	S2408	INTELSAT 904	GSO
Intelsat License LLC	S2804	INTELSAT 25	GSO
Intelsat License LLC	S2959	INTELSAT 35e	GSO
Intelsat License LLC	S2237	INTELSAT 11	GSO
Intelsat License LLC	S2785	INTELSAT 14	GSO
Intelsat License LLC	S2380	INTELSAT 9	GSO
Intelsat License LLC	S2831	INTELSAT 23	GSO
Intelsat License LLC	S2915	INTELSAT 34	GSO
Intelsat License LLC	S2863	INTELSAT 21	GSO
Intelsat License LLC	S2750	INTELSAT 16	GSO
Intelsat License LLC	S2715	GALAXY 17	GSO
Intelsat License LLC	S2154	GALAXY 25	GSO
Intelsat License LLC	S2253	GALAXY 11	GSO
Intelsat License LLC	S2381	GALAXY 3C	GSO
Intelsat License LLC	S2887	INTELSAT 30	GSO
Intelsat License LLC	S2924	INTELSAT 31	GSO
Intelsat License LLC	S2647	GALAXY 19	GSO
Intelsat License LLC	S2687	GALAXY 16	GSO
Intelsat License LLC	S2733	GALAXY 18	GSO
Intelsat License LLC	S2385	GALAXY 14	GSO
Intelsat License LLC	S2386	GALAXY 13	GSO
Intelsat License LLC	S2422	GALAXY 12	GSO
Intelsat License LLC	S2387	GALAXY 15	GSO
Intelsat License LLC	S2704	INTELSAT 5	GSO
Intelsat License LLC	S2817	INTELSAT 18	GSO
Intelsat License LLC	S2850	INTELSAT 19	GSO
Intelsat License LLC	S2368	INTELSAT 1R	GSO
Intelsat License LLC	S2789	INTELSAT 15	GSO
Intelsat License LLC	S2423	HORIZONS 2	GSO
Intelsat License LLC	S2846	INTELSAT 22	GSO
Intelsat License LLC	S2847	INTELSAT 20	GSO
Intelsat License LLC	S2948	INTELSAT 36	GSO
Intelsat License LLC	S2814	INTELSAT 17	GSO
Intelsat License LLC	S2410	INTELSAT 906	GSO
Intelsat License LLC	S2406	INTELSAT 902	GSO
Intelsat License LLC	S2939	INTELSAT 33e	GSO
Intelsat License LLC	S2382	INTELSAT 10	GSO

TABLE 6—SATELLITE CHARTS FOR FY 2023 REGULATORY FEES—U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
Intelsat License LLC	S2751	NEW DAWN	GSO
Intelsat License LLC	S3023	INTELSAT 39	GSO
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA–1	GSO
Ligado Networks Subsidiary, LLC	AMSC–1	MSAT–2	GSO
Novavision Group, Inc	S2861	DIRECTV KU–79W	GSO
Satellite CD Radio LLC	S2812	FM–6	GSO
SES Americom, Inc	S2415	NSS–10	GSO
SES Americom, Inc	S2162	AMC–3	GSO
SES Americom, Inc	S2347	AMC–6	GSO
SES Americom, Inc	S2826	SES–2	GSO
SES Americom, Inc	S2807	SES–1	GSO
SES Americom, Inc	S2892	SES–3	GSO
SES Americom, Inc	S2180	AMC–15	GSO
SES Americom, Inc	S2445	AMC–1	GSO
SES Americom, Inc	S2135	AMC–4	GSO
SES Americom, Inc	S2713	AMC–18	GSO
SES Americom, Inc	S2433	AMC–11	GSO
SES Americom, Inc./Alascom, Inc	S2379/S3138	AMC–8/SES–22	GSO
Sirius XM Radio Inc	S2710	FM–5	GSO
Sirius XM Radio Inc	S3034/S2617/ S2616	XM–8/XM–3/XM–4	GSO
Skynet Satellite Corporation	S2933	TELSTAR 12V	GSO
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO
ViaSat, Inc	S2747	VIASAT–1	GSO
XM Radio LLC	S2786/S3033	XM–5/XM–7	GSO

NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite common name	Satellite type
ABS Global Ltd	S2987	ABS–3A	GSO
Avanti Hylas 2 Ltd	S3130	HYLAS–4	GSO
DBSD Services Ltd	S2651	DBSD G1	GSO
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT–2	GSO
Eutelsat S.A	S3031	EUTELSAT 133 WEST A	GSO
Eutelsat S.A	S3056	EUTELSAT 8 WEST B	GSO
Eutelsat S.A	S3055	EUTELSAT 139 WEST A	GSO
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO
Hispamar Satélites, S.A	S2793	AMAZONAS–2	GSO
Hispamar Satélites, S.A	S2886	AMAZONAS–3	GSO
Hispasat, S.A	S2969	HISPASAT 30W–6	GSO
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO
New Skies Satellites B.V	S2756	NSS–9	GSO
New Skies Satellites B.V	S2870	SES–6	GSO
New Skies Satellites B.V	S3048	NSS–6	GSO
New Skies Satellites B.V	S2828	SES–4	GSO
New Skies Satellites B.V	S2950	SES–10	GSO
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO
SES Americom, Inc	S3037	NSS–11	GSO
SES Americom, Inc	S2964	SES–11	GSO
SES DTH do Brasil Ltda	S2974	SES–14	GSO
SES Satellites (Gibraltar) Ltd	S2951	SES–15	GSO
SES–17 S.a.r.l	S3043	SES–17	GSO
Embratel Tvsat Telecommunicacoes S.A	S2678	STAR ONE C2	GSO
Embratel Tvsat Telecommunicacoes S.A	S2845	STAR ONE C3	GSO
Telesat Brasil Capacidade de Satelites Ltda	S2821	ESTRELA DO SUL 2	GSO
Telesat Canada	S2745	ANIK F1	GSO
Telesat Canada	S2674	ANIK F1R	GSO
Telesat Canada	S2703	ANIK F3	GSO
Telesat Canada	S2646/S2472	ANIK F2	GSO
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO
Viasat, Inc	S2902	VIASAT–2	GSO

NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

ITU name (if available)	Common name	Call sign	GSO/NGSO
APSTAR VI	APSTAR 6	M292090	GSO
AUSSAT B 152E	OPTUS D2	M221170	GSO
Ciel Satellite Group	Ciel-2	E050029	GSO
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO
JCSAT–2B	JCSAT–2B	M174163	GSO
NIMIQ 5	NIMIQ 5	E080107	GSO
QUETZSAT–1(MEX)	QUETZSAT–1	NUS1101	GSO
Superbird C2	Superbird C2	M334100	GSO
WILDBLUE–1	WILDBLUE–1	E040213	GSO

NON-GEOSTATIONARY SPACE STATIONS (NGSO)

ITU name (if available)	Common name	Call sign	NGSO
U.S.-Licensed NGSO Systems			
ORBCOMM License Corp	ORBCOMM	S2103	Other
Iridium Constellation LLC	IRIDIUM	S2110	Other
Space Exploration Holdings, LLC	SPACEX Ku/Ka-Band	S2983/S3018	Other
Swarm Technologies	SWARM	S3041	Other
Planet Labs	Flock/Skysats	S2912	Less Complex
Maxar License	WorldView 1,2 & 3, GeoEye–1	S2129/S2348	Less Complex
BlackSky Global	Global	S3032	Less Complex
Astro Digital U.S., Inc	LANDMAPPER	S3014	Less Complex
Hawkeye 360	HE360	S3042	Less Complex
Spaceflight, Inc	Sherpa–AC1	S3133	Less Complex
Non-U.S.-Licensed NGSO Systems—Market Access Through Petition for Declaratory Ruling			
Telesat Canada	TELESAT Ku/Ka-Band	S2976	Other
Kepler Communications, Inc	KEPLER	S2981	Other
WorldVu Satellites Ltd	ONEWEB	S2963	Other
Myriota Pty. Ltd	MYRIOTA	S3047	Other
O3b Ltd	O3b	S2935	Other
NGSO Systems that Are Partly U.S.-Licensed and Partly Non-U.S.-Licensed with Market Access Through Petition for Declaratory Ruling			
Globalstar License LLC	GLOBALSTAR	S2115	Other
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex
NGSO Systems Licensed Under the Streamlined Small Satellite Rules			
Capella Space Corp	Capella-2, Capella-3, Capella-4.	S3073	Small Satellite
Capella Space Corp	Capella-5, Capella-6	S3080	Small Satellite
Capella Space Corp	Capella-7, Capella-8	S3100	Small Satellite
Loft Orbital Solutions Inc	YAM–3	S3072	Small Satellite
R2 Space, Inc	XR–1	S3067	Small Satellite
ICEYE US, Inc	ICEYE	S3082	Small Satellite
Umbra Lab Inc	Umbra SAR	S3095	Small Satellite

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
3246	KAAH–TV	$955,391	$879,906	$6,862
18285	KAAL	589,502	568,169	4,431
11912	KAAS–TV	220,262	219,922	1,715
56528	KABB	2,474,296	2,456,689	19,160
282	KABC–TV	17,540,791	16,957,292	132,250
1236	KACV–TV	372,627	372,330	2,904
33261	KADN–TV	877,965	877,965	6,847
8263	KAEF–TV	138,085	122,808	958
2728	KAET	4,217,217	4,184,386	32,634
2767	KAFT	1,204,376	1,122,928	8,758
62442	KAID	711,035	702,721	5,481
4145	KAII–TV	188,810	165,396	1,290

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
67494	KAIL	1,947,635	1,914,765	14,933
13988	KAIT	605,456	596,232	4,650
40517	KAJB	383,886	383,195	2,989
65522	KAKE	803,937	799,254	6,233
804	KAKM	380,240	379,105	2,957
148	KAKW–DT	2,615,956	2,531,813	19,746
51598	KALB–TV	943,307	942,043	7,347
51241	KALO	954,557	910,409	7,100
40820	KAMC	390,519	390,487	3,045
8523	KAMR–TV	366,476	366,335	2,857
65301	KAMU–TV	346,892	342,455	2,671
2506	KAPP	319,797	283,944	2,214
3658	KARD	703,234	700,887	5,466
23079	KARE	3,868,806	3,861,502	30,116
33440	KARK–TV	1,212,038	1,196,196	9,329
37005	KARZ–TV	1,113,486	1,095,224	8,542
32311	KASA–TV	1,161,837	1,119,457	8,731
41212	KASN	1,175,627	1,159,721	9,045
7143	KASW	4,174,437	4,160,497	32,448
55049	KASY–TV	1,145,133	1,100,391	8,582
33471	KATC	1,348,897	1,348,897	10,520
13813	KATN	97,466	97,128	758
21649	KATU	3,030,547	2,881,993	22,477
33543	KATV	1,257,777	1,234,933	9,631
50182	KAUT–TV	1,637,333	1,636,330	12,762
21488	KAUU	381,413	380,355	2,966
6864	KAUZ–TV	381,671	379,435	2,959
73101	KAVU–TV	319,618	319,484	2,492
49579	KAWB	186,919	186,845	1,457
49578	KAWE	136,033	133,937	1,045
58684	KAYU–TV	809,464	750,766	5,855
29234	KAZA–TV	14,973,535	13,810,130	107,705
17433	KAZD	6,776,778	6,774,172	52,832
1151	KAZQ	1,097,010	1,084,327	8,457
35811	KAZT–TV	436,925	359,273	2,802
4148	KBAK–TV	1,510,400	1,263,910	9,857
16940	KBCA	479,260	479,219	3,737
53586	KBCB	1,323,222	1,295,924	10,107
69619	KBCW	8,227,562	7,375,199	57,519
22685	KBDI–TV	4,042,177	3,683,394	28,727
56384	KBEH	17,736,497	17,695,306	138,006
65395	KBFD–DT	953,207	834,341	6,507
169030	KBGS–TV	159,269	156,802	1,223
61068	KBHE–TV	140,860	133,082	1,038
48556	KBIM–TV	205,701	205,647	1,604
29108	KBIN–TV	912,921	911,725	7,111
33658	KBJR–TV	275,585	271,298	2,116
83306	KBLN–TV	297,384	134,927	1,052
63768	KBLR	1,964,979	1,915,861	14,942
53324	KBME–TV	123,571	123,485	963
10150	KBMT	767,572	766,414	5,977
22121	KBMY	119,993	119,908	935
49760	KBOI–TV	715,191	708,374	5,525
55370	KBRR	149,869	149,868	1,169
66414	KBSD–DT	155,012	154,891	1,208
66415	KBSH–DT	102,781	100,433	783
19593	KBSI	756,501	754,722	5,886
66416	KBSL–DT	49,814	48,483	378
4939	KBSV	1,352,166	1,262,708	9,848
62469	KBTC–TV	3,697,981	3,621,965	28,248
61214	KBTV–TV	734,008	734,008	5,725
6669	KBTX–TV	4,404,648	4,401,048	34,324
35909	KBVO	1,498,015	1,312,360	10,235
58618	KBVU	135,249	120,827	942
6823	KBYU–TV	2,389,548	2,209,060	17,228
33756	KBZK	123,523	109,131	851
21422	KCAL–TV	17,499,483	16,889,157	131,719
11265	KCAU–TV	714,315	706,224	5,508
14867	KCBA	3,088,394	2,369,803	18,482
27507	KCBD	414,804	414,091	3,229
9628	KCBS–TV	17,853,152	16,656,778	129,906

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
49750	KCBY–TV	89,156	73,211	571
33710	KCCI	1,109,952	1,102,514	8,599
9640	KCCW–TV	284,280	276,935	2,160
63158	KCDO–TV	2,798,103	2,650,225	20,669
62424	KCDT	698,389	657,101	5,125
83913	KCEB	417,491	417,156	3,253
57219	KCEC	3,831,192	3,613,287	28,180
10245	KCEN–TV	1,795,767	1,757,018	13,703
13058	KCET	17,129,650	15,689,832	122,365
18079	KCFW–TV	177,697	140,192	1,093
132606	KCGE–DT	123,930	123,930	967
60793	KCHF	1,118,671	1,085,205	8,464
33722	KCIT	382,477	381,818	2,978
62468	KCKA	953,680	804,362	6,273
41969	KCLO–TV	138,413	132,157	1,031
47903	KCNC–TV	3,794,400	3,541,089	27,617
71586	KCNS	8,270,858	7,381,656	57,570
33742	KCOP–TV	17,386,133	16,647,708	129,835
19117	KCOS	1,014,396	1,014,205	7,910
63165	KCOY–TV	664,655	459,468	3,583
33894	KCPQ	4,439,875	4,312,133	33,630
53843	KCPT	2,507,879	2,506,224	19,546
33875	KCRA–TV	10,612,483	6,500,774	50,700
9719	KCRG–TV	1,136,762	1,107,130	8,635
60728	KCSD–TV	273,553	273,447	2,133
59494	KCSG	174,814	164,765	1,285
33749	KCTS–TV	4,177,824	4,115,603	32,098
41230	KCTV	2,547,456	2,545,645	19,853
58605	KCVU	684,900	674,585	5,261
10036	KCWC–DT	44,216	39,439	308
64444	KCWE	2,459,924	2,458,302	19,172
51502	KCWI–TV	1,043,811	1,042,642	8,132
42008	KCWO–TV	50,707	50,685	395
166511	KCWV	207,398	207,370	1,617
24316	KCWX	3,961,268	3,954,787	30,843
68713	KCWY–DT	80,904	80,479	628
22201	KDAF	6,648,507	6,645,226	51,826
33764	KDBC–TV	1,015,564	1,015,162	7,917
79258	KDCK	43,088	43,067	336
166332	KDCU–DT	753,204	753,190	5,874
38375	KDEN–TV	3,376,799	3,351,182	26,136
17037	KDFI	6,684,439	6,682,487	52,117
33770	KDFW	6,659,312	6,657,023	51,918
29102	KDIN–TV	1,088,376	1,083,845	8,453
25454	KDKA–TV	3,611,796	3,450,690	26,912
60740	KDKF	71,413	64,567	504
4691	KDLH	263,422	260,394	2,031
41975	KDLO–TV	208,354	208,118	1,623
55379	KDLT–TV	639,284	628,281	4,900
55375	KDLV–TV	96,873	96,620	754
25221	KDMD	376,906	374,641	2,922
78915	KDMI	1,141,990	1,140,939	8,898
56524	KDNL–TV	2,987,219	2,982,311	23,259
24518	KDOC–TV	17,503,793	16,701,233	130,253
1005	KDOR–TV	1,112,060	1,108,556	8,646
60736	KDRV	519,706	440,002	3,432
61064	KDSD–TV	64,314	59,635	465
53329	KDSE	42,896	41,432	323
56527	KDSM–TV	1,096,220	1,095,478	8,544
49326	KDTN	6,602,327	6,600,186	51,475
83491	KDTP	26,564	24,469	191
33778	KDTV–DT	7,959,349	7,129,638	55,604
67910	KDTX–TV	6,680,738	6,679,424	52,093
126	KDVR	3,644,912	3,521,884	27,467
18084	KECI–TV	211,745	193,803	1,511
51208	KECY–TV	399,372	394,379	3,076
58408	KEDT	513,683	513,683	4,006
55435	KEET	177,313	159,960	1,248
37103	KEKE	97,959	94,560	737
41983	KELO–TV	705,364	646,126	5,039
34440	KEMO–TV	8,270,858	7,381,656	57,570

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
2777	KEMV	619,889	559,135	4,361
26304	KENS	2,544,094	2,529,382	19,727
63845	KENV–DT	47,220	40,677	317
18338	KENW	87,017	87,017	679
50591	KEPB–TV	576,964	523,655	4,084
56029	KEPR–TV	453,259	433,260	3,379
49324	KERA–TV	6,681,083	6,677,852	52,081
40878	KERO–TV	1,285,357	1,164,979	9,086
61067	KESD–TV	166,018	159,195	1,242
25577	KESQ–TV	1,334,172	572,057	4,461
50205	KETA–TV	1,702,441	1,688,227	13,166
62182	KETC	2,913,924	2,911,313	22,705
37101	KETD	3,323,570	3,285,231	25,622
2768	KETG	426,883	409,511	3,194
12895	KETH–TV	6,088,821	6,088,677	47,486
55643	KETK–TV	1,031,567	1,030,122	8,034
2770	KETS	1,185,111	1,166,796	9,100
53903	KETV	1,355,238	1,350,292	10,531
92872	KETZ	526,890	523,877	4,086
68853	KEYC–TV	544,900	531,079	4,142
33691	KEYE–TV	2,732,257	2,652,529	20,687
60637	KEYT–TV	1,419,564	1,239,577	9,667
83715	KEYU	339,348	339,302	2,646
34406	KEZI	1,113,171	1,065,880	8,313
34412	KFBB–TV	93,519	91,964	717
125	KFCT	795,114	788,747	6,151
51466	KFDA–TV	385,064	383,977	2,995
22589	KFDM	732,665	732,588	5,713
65370	KFDX–TV	381,703	381,318	2,974
49264	KFFV	4,020,926	3,987,153	31,096
12729	KFFX–TV	409,952	403,692	3,148
83992	KFJX	689,090	663,506	5,175
42122	KFMB–TV	3,947,735	3,699,981	28,856
53321	KFME	393,045	392,472	3,061
74256	KFNB	80,382	79,842	623
21613	KFNE	54,988	54,420	424
21612	KFNR	10,988	10,965	86
66222	KFOR–TV	1,616,459	1,615,614	12,600
33716	KFOX–TV	1,023,999	1,018,549	7,944
41517	KFPH–DT	347,579	282,838	2,206
81509	KFPX–TV	963,969	963,846	7,517
31597	KFQX	186,473	163,637	1,276
59013	KFRE–TV	1,721,275	1,705,484	13,301
51429	KFSF–DT	7,348,828	6,528,430	50,915
66469	KFSM–TV	906,728	884,919	6,901
8620	KFSN–TV	1,836,607	1,819,585	14,191
29560	KFTA–TV	818,859	809,173	6,311
83714	KFTC	61,990	61,953	483
60537	KFTH–DT	6,080,688	6,080,373	47,421
60549	KFTR–DT	17,560,679	16,305,726	127,168
61335	KFTS	74,936	65,126	508
81441	KFTU–DT	113,876	109,731	856
34439	KFTV–DT	1,794,984	1,779,917	13,882
664	KFVE	82,902	73,553	574
592	KFVS–TV	895,871	873,777	6,815
29015	KFWD	6,666,428	6,660,565	51,946
35336	KFXA	875,538	874,070	6,817
17625	KFXB–TV	373,280	368,466	2,874
70917	KFXK–TV	934,043	931,791	7,267
84453	KFXL–TV	862,531	854,678	6,666
56079	KFXV	1,225,732	1,225,732	9,559
41427	KFYR–TV	130,881	128,301	1,001
25685	KGAN	1,083,213	1,057,597	8,248
34457	KGBT–TV	1,239,001	1,238,870	9,662
7841	KGCW	949,575	945,476	7,374
24485	KGEB	1,186,225	1,150,201	8,970
34459	KGET–TV	917,927	874,332	6,819
53320	KGFE	114,564	114,564	893
7894	KGIN	230,535	228,338	1,781
83945	KGLA–DT	1,636,922	1,636,922	12,766
34445	KGMB	953,398	851,088	6,638

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
58608	KGMC	1,936,675	1,914,168	14,929
36914	KGMD–TV	94,323	93,879	732
36920	KGMV	193,564	162,230	1,265
10061	KGNS–TV	267,236	259,548	2,024
34470	KGO–TV	8,637,074	7,929,294	61,841
56034	KGPE	1,699,131	1,682,082	13,119
81694	KGPX–TV	685,626	624,955	4,874
25511	KGTF	161,885	160,568	1,252
40876	KGTV	3,960,667	3,682,219	28,718
36918	KGUN–TV	1,398,527	1,212,484	9,456
34874	KGW	3,026,617	2,878,510	22,449
63177	KGWC–TV	80,475	80,009	624
63162	KGWL–TV	38,125	38,028	297
63166	KGWN–TV	469,467	440,388	3,435
63170	KGWR–TV	51,315	50,957	397
4146	KHAW–TV	95,204	94,851	740
60353	KHBS	631,770	608,052	4,742
27300	KHCE–TV	2,353,883	2,348,391	18,315
26431	KHET	959,060	944,568	7,367
21160	KHGI–TV	233,973	229,173	1,787
36917	KHII–TV	953,895	851,585	6,642
29085	KHIN	1,041,244	1,039,383	8,106
17688	KHME	181,345	179,706	1,402
47670	KHMT	175,601	170,957	1,333
47987	KHNE–TV	203,931	202,944	1,583
34867	KHNL	953,398	851,088	6,638
60354	KHOG–TV	765,360	702,984	5,483
4144	KHON–TV	953,207	886,431	6,913
34529	KHOU	6,083,315	6,081,936	47,433
4690	KHQA–TV	318,469	316,134	2,466
34537	KHQ–TV	822,371	774,821	6,043
30601	KHRR	1,227,847	1,166,890	9,101
34348	KHSD–TV	188,735	185,202	1,444
24508	KHSL–TV	625,904	608,850	4,748
69677	KHSV	2,059,794	2,020,045	15,754
64544	KHVO	94,226	93,657	730
23394	KIAH	6,099,694	6,099,297	47,568
34564	KICU–TV	8,233,041	7,174,316	55,952
56028	KIDK	305,509	302,535	2,359
58560	KIDY	116,614	116,596	909
53382	KIEM–TV	174,390	160,801	1,254
66258	KIFI–TV	324,422	320,118	2,497
16950	KIFR	2,180,045	2,160,460	16,849
10188	KIII	569,864	566,796	4,420
29095	KIIN	1,365,215	1,335,707	10,417
34527	KIKU	953,896	850,963	6,637
63865	KILM	17,256,205	15,804,489	123,259
56033	KIMA–TV	308,604	260,593	2,032
66402	KIMT	654,083	643,384	5,018
67089	KINC	2,002,066	1,920,903	14,981
34847	KING–TV	4,074,288	4,036,926	31,484
51708	KINT–TV	1,015,582	1,015,274	7,918
26249	KION–TV	2,400,317	855,808	6,674
62427	KIPT	171,405	170,455	1,329
66781	KIRO–TV	4,058,101	4,030,968	31,438
62430	KISU–TV	311,827	307,651	2,399
12896	KITU–TV	712,362	712,362	5,556
64548	KITV	953,207	839,906	6,550
59255	KIVI–TV	710,819	702,619	5,480
47285	KIXE–TV	467,518	428,118	3,339
13792	KJJC–TV	82,749	81,865	638
14000	KJLA	17,929,100	16,794,896	130,983
20015	KJNP–TV	98,403	98,097	765
53315	KJRE	16,187	16,170	126
59439	KJRH–TV	1,416,108	1,397,311	10,898
55364	KJRR	45,515	44,098	344
7675	KJTL	379,594	379,263	2,958
55031	KJTV–TV	406,283	406,260	3,168
13814	KJUD	31,229	30,106	235
36607	KJZZ–TV	2,388,965	2,209,183	17,229
83180	KKAI	953,400	919,742	7,173

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
58267	KKAP	957,786	923,172	7,200
24766	KKCO	206,018	172,628	1,346
35097	KKJB	629,939	624,784	4,873
22644	KKPX–TV	7,588,288	6,758,490	52,709
35037	KKTV	2,892,126	2,478,864	19,333
35042	KLAS–TV	2,094,297	1,940,030	15,130
52907	KLAX–TV	367,212	366,839	2,861
3660	KLBK–TV	387,783	387,743	3,024
65523	KLBY	31,102	31,096	243
38430	KLCS	17,129,650	15,689,832	122,365
77719	KLCW–TV	381,889	381,816	2,978
51479	KLDO–TV	250,832	250,832	1,956
37105	KLEI	175,045	138,087	1,077
56032	KLEW–TV	164,908	148,256	1,156
35059	KLFY–TV	1,355,890	1,355,409	10,571
54011	KLJB	1,027,104	1,012,309	7,895
11264	KLKN	1,161,979	1,122,111	8,751
52593	KLML	270,089	218,544	1,704
47975	KLNE–TV	123,324	123,246	961
38590	KLPA–TV	414,699	414,447	3,232
38588	KLPB–TV	749,053	749,053	5,842
749	KLRN	2,374,472	2,353,440	18,354
11951	KLRT–TV	1,171,678	1,152,541	8,989
8564	KLRU	2,614,658	2,575,518	20,086
8322	KLSR–TV	564,415	508,157	3,963
31114	KLST	199,067	169,551	1,322
24436	KLTJ	6,034,131	6,033,867	47,058
38587	KLTL–TV	423,574	423,574	3,303
38589	KLTM–TV	694,280	688,915	5,373
38591	KLTS–TV	947,141	944,257	7,364
68540	KLTV	1,069,690	1,051,361	8,200
12913	KLUJ–TV	1,195,751	1,195,751	9,326
57220	KLUZ–TV	1,079,718	1,019,302	7,950
11683	KLVX	2,044,150	1,936,083	15,100
82476	KLWB	1,065,748	1,065,748	8,312
40250	KLWY	541,043	538,231	4,198
64551	KMAU	213,060	188,953	1,474
51499	KMAX–TV	10,767,605	7,132,240	55,624
65686	KMBC–TV	2,506,035	2,504,622	19,534
35183	KMCB	69,357	66,203	516
41237	KMCC	2,064,592	2,010,262	15,678
42636	KMCI–TV	2,429,392	2,428,626	18,941
38584	KMCT–TV	267,004	266,880	2,081
22127	KMCY	71,797	71,793	560
162016	KMDE	35,409	35,401	276
26428	KMEB	221,810	203,470	1,587
39665	KMEG	708,748	704,130	5,492
35123	KMEX–DT	17,628,354	16,318,720	127,270
40875	KMGH–TV	3,815,224	3,574,344	27,876
35131	KMID	383,449	383,439	2,990
16749	KMIR–TV	2,760,914	730,764	5,699
63164	KMIZ	532,025	530,008	4,134
53541	KMLM–DT	293,290	293,290	2,287
52046	KMLU	711,951	708,107	5,523
47981	KMNE–TV	47,232	44,189	345
24753	KMOH–TV	199,885	184,283	1,437
4326	KMOS–TV	804,745	803,129	6,264
41425	KMOT	81,517	79,504	620
70034	KMOV	3,035,077	3,029,405	23,626
51488	KMPH–TV	1,754,037	1,717,555	13,395
73701	KMPX	6,678,829	6,674,706	52,056
44052	KMSB	1,321,614	1,039,442	8,107
68883	KMSP–TV	3,857,891	3,829,859	29,869
12525	KMSS–TV	1,067,838	1,066,106	8,315
43095	KMTP–TV	5,242,638	4,441,372	34,638
35189	KMTR	589,948	520,666	4,061
35190	KMTV–TV	1,346,549	1,344,796	10,488
77063	KMTW	761,521	761,516	5,939
35200	KMVT	184,647	176,351	1,375
32958	KMVU–DT	308,150	231,506	1,806
86534	KMYA–DT	200,764	200,725	1,565

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
51518	KMYS	2,273,888	2,267,913	17,687
54420	KMYT–TV	1,314,197	1,302,378	10,157
35822	KMYU	133,563	130,198	1,015
993	KNAT–TV	1,157,630	1,124,619	8,771
24749	KNAZ–TV	332,321	227,658	1,776
47906	KNBC	17,244,237	15,812,389	123,321
81464	KNBN	145,493	136,995	1,068
9754	KNCT	1,751,838	1,726,148	13,462
82611	KNDB	118,154	118,122	921
82615	KNDM	72,216	72,209	563
12395	KNDO	314,875	270,892	2,113
12427	KNDU	475,612	462,556	3,607
17683	KNEP	101,389	95,890	748
48003	KNHL	277,777	277,308	2,163
125710	KNIC–DT	2,398,296	2,383,294	18,587
59363	KNIN–TV	708,289	703,838	5,489
48525	KNLC	2,981,508	2,978,979	23,233
48521	KNLJ	655,000	642,705	5,012
84215	KNMD–TV	1,135,642	1,108,358	8,644
55528	KNME–TV	1,148,741	1,105,095	8,619
47707	KNMT	2,887,142	2,794,995	21,798
48975	KNOE–TV	733,097	729,703	5,691
49273	KNOP–TV	87,904	85,423	666
10228	KNPB	604,614	462,732	3,609
55362	KNRR	25,957	25,931	202
35277	KNSD	3,861,660	3,618,321	28,219
19191	KNSN–TV	611,981	459,485	3,584
23302	KNSO	1,824,786	1,803,796	14,068
35280	KNTV	8,525,818	8,027,505	62,607
144	KNVA	2,550,225	2,529,184	19,725
33745	KNVN	495,902	470,252	3,667
69692	KNVO	1,247,014	1,247,014	9,725
29557	KNWA–TV	822,906	804,682	6,276
59440	KNXV–TV	4,183,943	4,173,022	32,545
59014	KOAA–TV	1,608,528	1,203,731	9,388
50588	KOAB–TV	207,070	203,371	1,586
50590	KOAC–TV	1,957,282	1,543,401	12,037
58552	KOAM–TV	793,563	767,962	5,989
53928	KOAT–TV	1,132,372	1,105,116	8,619
35313	KOB	1,152,841	1,113,162	8,682
35321	KOBF	201,911	166,177	1,296
8260	KOBI	562,463	519,063	4,048
62272	KOBR	211,709	211,551	1,650
50170	KOCB	1,629,783	1,629,152	12,706
4328	KOCE–TV	17,446,133	16,461,581	128,384
84225	KOCM	1,434,325	1,433,605	11,181
12508	KOCO–TV	1,716,569	1,708,085	13,321
83181	KOCW	83,807	83,789	653
18283	KODE–TV	740,156	731,512	5,705
66195	KOED–TV	1,497,297	1,459,833	11,385
50198	KOET	658,606	637,640	4,973
51189	KOFY–TV	5,242,638	4,441,372	34,638
34859	KOGG	190,829	161,310	1,258
166534	KOHD	201,310	197,662	1,542
35380	KOIN	3,028,482	2,881,460	22,473
35388	KOKH–TV	1,627,116	1,625,246	12,675
11910	KOKI–TV	1,366,220	1,352,227	10,546
48663	KOLD–TV	1,216,228	887,754	6,924
7890	KOLN	1,421,223	1,337,970	10,435
63331	KOLO–TV	959,178	826,985	6,450
28496	KOLR	1,076,144	1,038,613	8,100
21656	KOMO–TV	4,132,260	4,087,435	31,878
65583	KOMU–TV	551,658	542,544	4,231
35396	KONG	3,998,831	3,981,688	31,053
60675	KOOD	113,416	113,285	884
50589	KOPB–TV	3,059,231	2,875,815	22,428
2566	KOPX–TV	1,501,110	1,500,883	11,705
64877	KORO	560,983	560,983	4,375
6865	KOSA–TV	340,978	338,070	2,637
34347	KOTA–TV	174,876	152,861	1,192
8284	KOTI	298,175	97,132	758

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
35434	KOTV–DT	1,417,753	1,403,838	10,949
56550	KOVR	10,784,477	7,162,989	55,864
51101	KOZJ	429,982	427,991	3,338
51102	KOZK	839,841	834,308	6,507
3659	KOZL–TV	992,495	963,281	7,513
35455	KPAX–TV	206,895	193,201	1,507
67868	KPAZ–TV	4,190,080	4,176,323	32,571
6124	KPBS	3,584,237	3,463,189	27,009
50044	KPBT–TV	340,080	340,080	2,652
77452	KPCB–DT	30,861	30,835	240
35460	KPDX	2,970,703	2,848,423	22,215
12524	KPEJ–TV	368,212	368,208	2,872
41223	KPHO–TV	4,195,073	4,175,139	32,562
61551	KPIC	156,687	105,807	825
86205	KPIF	265,080	258,174	2,013
25452	KPIX–TV	8,226,463	7,360,625	57,406
58912	KPJK	7,884,411	6,955,179	54,243
166510	KPJR–TV	3,402,088	3,372,831	26,305
13994	KPLC	1,406,085	1,403,853	10,949
41964	KPLO–TV	55,827	52,765	412
35417	KPLR–TV	2,991,598	2,988,106	23,304
12144	KPMR	1,731,370	1,473,251	11,490
47973	KPNE–TV	92,675	89,021	694
35486	KPNX	4,180,982	4,176,442	32,572
77512	KPNZ	2,394,311	2,208,707	17,226
73998	KPOB–TV	144,525	143,656	1,120
26655	KPPX–TV	4,186,998	4,171,450	32,533
53117	KPRC–TV	6,099,422	6,099,076	47,567
48660	KPRY–TV	42,521	42,426	331
61071	KPSD–TV	19,886	18,799	147
53544	KPTB–DT	322,780	320,646	2,501
81445	KPTF–DT	84,512	84,512	659
77451	KPTH	660,556	655,373	5,111
51491	KPTM	1,405,533	1,404,364	10,953
33345	KPTS	832,000	827,866	6,457
50633	KPTV	2,998,460	2,847,263	22,206
82575	KPTW	89,433	82,522	644
1270	KPVI–DT	271,379	264,204	2,061
58835	KPXB–TV	6,062,458	6,062,238	47,279
68695	KPXC–TV	3,362,518	3,341,951	26,064
68834	KPXD–TV	6,555,157	6,553,373	51,110
33337	KPXE–TV	2,437,178	2,436,024	18,999
5801	KPXG–TV	3,026,219	2,882,598	22,481
81507	KPXJ	1,138,632	1,135,626	8,857
61173	KPXL–TV	2,257,007	2,243,520	17,497
35907	KPXM–TV	3,507,312	3,506,503	27,347
58978	KPXN–TV	17,256,205	15,804,489	123,259
77483	KPXO–TV	953,329	913,341	7,123
21156	KPXR–TV	828,915	821,250	6,405
10242	KQCA	10,077,891	6,276,197	48,948
41430	KQCD–TV	35,623	33,415	261
18287	KQCK	3,216,059	3,185,307	24,842
78322	KQCW–DT	1,128,198	1,123,324	8,761
35525	KQDS–TV	304,935	301,439	2,351
35500	KQED	8,195,398	7,283,828	56,807
35663	KQEH	8,195,398	7,283,828	56,807
8214	KQET	2,981,040	2,076,157	16,192
5471	KQIN	596,371	596,277	4,650
17686	KQME	188,783	184,719	1,441
61063	KQSD–TV	32,526	31,328	244
8378	KQSL	199,123	142,419	1,111
20427	KQTV	1,494,987	1,401,160	10,928
78921	KQUP	697,016	551,824	4,304
306	KRBC–TV	229,395	229,277	1,788
166319	KRBK	983,888	966,187	7,535
22161	KRCA	17,540,791	16,957,292	132,250
57945	KRCB	8,783,441	8,503,802	66,321
41110	KRCG	737,927	722,255	5,633
8291	KRCR–TV	423,000	402,594	3,140
10192	KRCW–TV	2,966,912	2,842,523	22,169
49134	KRDK–TV	349,941	349,929	2,729

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
52579	KRDO–TV	2,622,603	2,272,383	17,722
70578	KREG–TV	149,306	95,141	742
34868	KREM	817,619	752,113	5,866
51493	KREN–TV	810,039	681,212	5,313
70596	KREX–TV	145,700	145,606	1,136
70579	KREY–TV	74,963	65,700	512
48589	KREZ–TV	148,079	105,121	820
43328	KRGV–TV	1,247,057	1,247,029	9,726
82698	KRII	133,840	132,912	1,037
29114	KRIN	949,313	923,735	7,204
25559	KRIS–TV	565,112	565,044	4,407
22204	KRIV	6,078,936	6,078,846	47,409
14040	KRMA–TV	3,722,512	3,564,949	27,803
14042	KRMJ	174,094	159,511	1,244
20476	KRMT	2,956,144	2,864,236	22,338
84224	KRMU	85,274	72,499	565
20373	KRMZ	36,293	33,620	262
47971	KRNE–TV	47,473	38,273	298
60307	KRNV–DT	955,490	792,543	6,181
65526	KRON–TV	8,573,167	8,028,256	62,612
53539	KRPV–DT	65,943	65,943	514
48575	KRQE	1,135,461	1,105,093	8,619
57431	KRSU–TV	1,000,289	998,310	7,786
82613	KRTN–TV	84,231	68,550	535
35567	KRTV	92,645	90,849	709
84157	KRWB–TV	111,538	110,979	866
35585	KRWF	85,596	85,596	668
55516	KRWG–TV	894,492	661,703	5,161
48360	KRXI–TV	725,391	548,865	4,281
307	KSAN–TV	135,063	135,051	1,053
11911	KSAS–TV	752,513	752,504	5,869
53118	KSAT–TV	2,539,658	2,502,246	19,515
35584	KSAX	365,209	365,209	2,848
35587	KSAZ–TV	4,203,126	4,178,448	32,588
38214	KSBI	1,577,231	1,575,865	12,290
19653	KSBW	5,083,461	4,429,165	34,543
19654	KSBY	535,029	495,562	3,865
82910	KSCC	517,740	517,740	4,038
10202	KSCE	1,015,148	1,010,581	7,882
35608	KSCI	17,446,133	16,461,581	128,384
72348	KSCW–DT	915,691	910,511	7,101
46981	KSDK	2,986,776	2,979,047	23,234
35594	KSEE	1,761,193	1,746,282	13,619
48658	KSFY–TV	670,536	607,844	4,741
17680	KSGW–TV	62,178	57,629	449
59444	KSHB–TV	2,432,205	2,431,273	18,961
73706	KSHV–TV	943,947	942,978	7,354
29096	KSIN–TV	340,143	338,811	2,642
34846	KSIX–TV	74,884	74,884	584
35606	KSKN	731,818	643,590	5,019
70482	KSLA	1,017,556	1,016,667	7,929
6359	KSL–TV	2,390,742	2,206,920	17,212
71558	KSMN	320,813	320,808	2,502
33336	KSMO–TV	2,401,201	2,398,686	18,707
28510	KSMQ–TV	524,391	507,983	3,962
35611	KSMS–TV	1,589,263	882,948	6,886
21161	KSNB–TV	664,079	662,726	5,169
72359	KSNC	174,135	173,744	1,355
67766	KSNF	621,919	617,868	4,819
72361	KSNG	145,058	144,822	1,129
72362	KSNK	48,715	45,414	354
67335	KSNT	622,818	594,604	4,637
10179	KSNV	1,967,781	1,919,296	14,969
72358	KSNW	791,403	791,127	6,170
61956	KSPS–TV	819,101	769,852	6,004
52953	KSPX–TV	7,078,228	5,275,946	41,147
166546	KSQA	382,328	374,290	2,919
53313	KSRE	75,181	75,181	586
35843	KSTC–TV	3,843,788	3,835,674	29,914
63182	KSTF	51,317	51,122	399
28010	KSTP–TV	3,788,898	3,782,053	29,496

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
60534	KSTR–DT	6,632,577	6,629,296	51,702
64987	KSTS	8,363,473	7,264,852	56,659
22215	KSTU	2,384,996	2,201,716	17,171
23428	KSTW	4,265,956	4,186,266	32,649
5243	KSVI	175,390	173,667	1,354
58827	KSWB–TV	3,677,190	3,488,655	27,208
60683	KSWK	79,012	78,784	614
35645	KSWO–TV	483,132	458,057	3,572
61350	KSYS	519,209	443,204	3,457
59988	KTAB–TV	274,707	274,536	2,141
999	KTAJ–TV	2,343,843	2,343,227	18,275
35648	KTAL–TV	1,094,332	1,092,958	8,524
12930	KTAS	471,882	464,149	3,620
81458	KTAZ	4,182,503	4,160,481	32,448
35649	KTBC	3,242,215	2,956,614	23,059
67884	KTBN–TV	17,929,445	16,750,096	130,634
67999	KTBO–TV	1,585,293	1,583,553	12,350
35652	KTBS–TV	1,163,228	1,159,665	9,044
28324	KTBU	6,035,927	6,035,725	47,073
67950	KTBW–TV	4,202,104	4,108,031	32,039
35655	KTBY	348,080	346,562	2,703
68594	KTCA–TV	3,693,877	3,684,081	28,732
68597	KTCI–TV	3,606,606	3,597,183	28,054
35187	KTCW	103,341	89,207	696
36916	KTDO	1,015,336	1,010,771	7,883
2769	KTEJ	419,750	417,368	3,255
83707	KTEL–TV	52,878	52,875	412
35666	KTEN	602,788	599,778	4,678
24514	KTFD–TV	3,210,669	3,172,543	24,743
35512	KTFF–DT	2,225,169	2,203,398	17,184
20871	KTFK–DT	6,969,307	5,211,719	40,646
68753	KTFN	1,017,335	1,013,157	7,902
35084	KTFQ–TV	1,151,433	1,117,061	8,712
29232	KTGM	159,358	159,091	1,241
2787	KTHV	1,275,053	1,246,348	9,720
29100	KTIN	281,096	279,385	2,179
66170	KTIV	751,089	746,274	5,820
49397	KTKA–TV	759,369	746,370	5,821
35670	KTLA	18,156,910	16,870,262	131,571
62354	KTLM	1,044,526	1,044,509	8,146
49153	KTLN–TV	5,381,955	4,740,894	36,974
64984	KTMD	6,095,741	6,095,606	47,540
14675	KTMF	187,251	168,526	1,314
10177	KTMW	2,261,671	2,144,791	16,727
21533	KTNC–TV	8,270,858	7,381,656	57,570
47996	KTNE–TV	100,341	95,324	743
60519	KTNL–TV	8,642	8,642	67
74100	KTNV–TV	2,094,506	1,936,752	15,105
71023	KTNW	450,926	432,398	3,372
8651	KTOO–TV	31,269	31,176	243
7078	KTPX–TV	1,066,196	1,063,754	8,296
68541	KTRE	441,879	421,406	3,287
35675	KTRK–TV	6,114,259	6,112,870	47,674
28230	KTRV–TV	714,833	707,557	5,518
69170	KTSC	3,124,536	2,949,795	23,005
61066	KTSD–TV	83,645	82,828	646
37511	KTSF	7,959,349	7,129,638	55,604
67760	KTSM–TV	1,015,348	1,011,264	7,887
35678	KTTC	815,213	731,919	5,708
28501	KTTM	76,133	73,664	575
11908	KTTU	1,324,801	1,060,613	8,272
22208	KTTV	17,380,551	16,693,085	130,189
28521	KTTW	329,633	326,405	2,546
65355	KTTZ–TV	380,240	380,225	2,965
35685	KTUL	1,416,959	1,388,183	10,826
10173	KTUU–TV	380,240	379,047	2,956
77480	KTUZ–TV	1,668,531	1,666,026	12,993
49632	KTVA	342,517	342,300	2,670
34858	KTVB	714,865	707,882	5,521
31437	KTVC	137,239	100,204	781
68581	KTVD	3,800,970	3,547,607	27,668

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
35692	KTVE	641,139	640,201	4,993
49621	KTVF	98,068	97,929	764
5290	KTVH–DT	228,832	184,264	1,437
35693	KTVI	2,995,764	2,991,513	23,331
40993	KTVK	4,184,825	4,173,028	32,545
22570	KTVL	419,849	369,469	2,881
18066	KTVM–TV	260,105	217,694	1,698
59139	KTVN	955,490	800,420	6,242
21251	KTVO	227,128	226,616	1,767
35694	KTVQ	179,797	173,271	1,351
50592	KTVR	147,808	54,480	425
23422	KTVT	6,912,366	6,908,715	53,881
35703	KTVU	8,297,634	7,406,751	57,765
35705	KTVW–DT	4,174,310	4,160,877	32,451
68889	KTVX	2,389,392	2,200,520	17,162
55907	KTVZ	201,828	198,558	1,549
18286	KTWO–TV	80,426	79,905	623
70938	KTWU	1,703,798	1,562,305	12,184
51517	KTXA	6,915,461	6,911,822	53,905
42359	KTXD–TV	6,706,651	6,704,781	52,291
51569	KTXH	6,092,627	6,092,442	47,515
10205	KTXL	8,306,449	5,896,320	45,985
308	KTXS–TV	247,603	246,760	1,924
69315	KUAC–TV	98,717	98,189	766
51233	KUAM–TV	159,358	159,358	1,243
2722	KUAS–TV	994,802	977,391	7,623
2731	KUAT–TV	1,485,024	1,253,342	9,775
60520	KUBD	14,817	13,363	104
70492	KUBE–TV	6,090,970	6,090,817	47,502
1136	KUCW	2,388,889	2,199,787	17,156
69396	KUED	2,388,995	2,203,093	17,182
69582	KUEN	2,364,481	2,184,483	17,037
82576	KUES	30,925	25,978	203
82585	KUEW	132,168	120,411	939
66611	KUFM–TV	187,680	166,697	1,300
169028	KUGF–TV	86,622	85,986	671
68717	KUHM–TV	154,836	145,241	1,133
69269	KUHT	6,080,222	6,078,866	47,409
62382	KUID–TV	432,855	284,023	2,215
169027	KUKL–TV	124,505	115,844	903
35724	KULR–TV	177,242	170,142	1,327
41429	KUMV–TV	41,607	41,224	322
81447	KUNP	130,559	43,472	339
4624	KUNS–TV	4,027,849	4,015,626	31,318
86532	KUOK	28,974	28,945	226
66589	KUON–TV	1,375,257	1,360,005	10,607
86263	KUPB	318,914	318,914	2,487
65535	KUPK	149,642	148,180	1,156
27431	KUPT	87,602	87,602	683
89714	KUPU	956,178	948,005	7,393
57884	KUPX–TV	2,374,672	2,191,229	17,089
23074	KUSA	3,802,407	3,560,546	27,769
61072	KUSD–TV	460,480	460,277	3,590
10238	KUSI–TV	3,572,818	3,435,670	26,795
43567	KUSM–TV	122,678	109,830	857
69694	KUTF	1,210,774	1,031,870	8,048
81451	KUTH–DT	2,219,788	2,027,174	15,810
68886	KUTP	4,191,015	4,176,014	32,569
35823	KUTV	2,388,625	2,199,731	17,156
63927	KUVE–DT	1,294,971	964,396	7,521
7700	KUVI–DT	1,204,490	1,009,943	7,877
35841	KUVN–DT	6,680,126	6,678,157	52,083
58609	KUVS–DT	4,043,413	4,005,657	31,240
49766	KVAL–TV	1,016,673	866,173	6,755
32621	KVAW	76,153	76,153	594
58795	KVCR–DT	18,215,524	17,467,140	136,226
35846	KVCT	288,221	287,446	2,242
10195	KVCW	1,967,550	1,918,809	14,965
64969	KVDA	2,566,563	2,548,720	19,877
19783	KVEA	17,538,249	16,335,335	127,399
12523	KVEO–TV	1,244,504	1,244,504	9,706

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
2495	KVEW	476,720	464,347	3,621
35852	KVHP	747,917	747,837	5,832
49832	KVIA–TV	1,015,350	1,011,266	7,887
35855	KVIE	10,759,440	7,467,369	58,238
40450	KVIH–TV	91,912	91,564	714
40446	KVII–TV	379,042	378,218	2,950
61961	KVLY–TV	362,850	362,838	2,830
16729	KVMD	15,274,297	14,512,400	113,182
83825	KVME–TV	26,711	22,802	178
25735	KVOA	1,317,956	1,030,404	8,036
35862	KVOS–TV	2,202,674	2,131,652	16,625
69733	KVPT	1,744,349	1,719,318	13,409
55372	KVRR	356,645	356,645	2,781
166331	KVSN–DT	2,706,244	2,283,409	17,808
608	KVTH–DT	303,755	299,230	2,334
2784	KVTJ–DT	1,466,426	1,465,802	11,432
607	KVTN–DT	936,328	925,884	7,221
35867	KVUE	2,661,290	2,611,314	20,366
78910	KVUI	257,964	251,872	1,964
35870	KVVU–TV	2,045,255	1,935,583	15,096
36170	KVYE	396,495	392,498	3,061
35095	KWBA–TV	1,129,524	1,073,029	8,369
78314	KWBM	657,822	639,560	4,988
27425	KWBN	953,207	840,455	6,555
76268	KWBQ	1,149,598	1,107,211	8,635
66413	KWCH–DT	883,647	881,674	6,876
71549	KWCM–TV	252,284	244,033	1,903
35419	KWDK	4,194,152	4,117,852	32,115
42007	KWES–TV	424,854	423,536	3,303
50194	KWET	127,976	112,750	879
35881	KWEX–DT	2,376,463	2,370,469	18,487
35883	KWGN–TV	3,706,455	3,513,537	27,402
37099	KWHB	979,393	978,719	7,633
36846	KWHE	952,966	834,341	6,507
26231	KWHY–TV	17,736,497	17,695,306	138,006
35096	KWKB	1,121,676	1,111,629	8,670
162115	KWKS	39,708	39,323	307
12522	KWKT–TV	1,299,675	1,298,478	10,127
21162	KWNB–TV	91,093	89,332	697
67347	KWOG	512,412	505,049	3,939
56852	KWPX–TV	4,220,008	4,148,577	32,355
6885	KWQC–TV	1,063,507	1,054,618	8,225
29121	KWSD	280,675	280,672	2,189
53318	KWSE	54,471	53,400	416
71024	KWSU–TV	725,554	468,295	3,652
25382	KWTV–DT	1,628,106	1,627,198	12,691
35903	KWTX–TV	2,071,023	1,972,365	15,382
593	KWWL	1,089,498	1,078,458	8,411
84410	KWWT	293,291	293,291	2,287
14674	KWYB	86,495	69,598	543
10032	KWYP–DT	148,473	133,470	1,041
35920	KXAN–TV	2,678,666	2,624,648	20,470
49330	KXAS–TV	6,774,295	6,771,827	52,813
24287	KXGN–TV	14,217	13,883	108
35954	KXII	2,323,974	2,264,951	17,664
55083	KXLA	17,929,100	16,794,896	130,983
35959	KXLF–TV	258,100	217,808	1,699
53847	KXLN–DT	6,085,891	6,085,712	47,462
35906	KXLT–TV	348,025	347,296	2,709
61978	KXLY–TV	772,116	740,960	5,779
55684	KXMA–TV	32,005	31,909	249
55686	KXMB–TV	142,755	138,506	1,080
55685	KXMC–TV	97,569	89,483	698
55683	KXMD–TV	37,962	37,917	296
47995	KXNE–TV	305,839	304,682	2,376
81593	KXNW	602,168	597,747	4,662
35991	KXRM–TV	1,843,363	1,500,689	11,704
1255	KXTF	140,746	140,312	1,094
25048	KXTV	10,759,864	7,477,140	58,314
35994	KXTX–TV	6,721,578	6,718,616	52,398
62293	KXVA	185,478	185,276	1,445

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
23277	KXVO	1,397,072	1,396,085	10,888
9781	KXXV	1,771,620	1,748,287	13,635
31870	KYAZ	6,038,257	6,038,071	47,091
29086	KYIN	581,748	574,691	4,482
60384	KYLE–TV	323,330	323,225	2,521
33639	KYMA–DT	396,278	391,619	3,054
47974	KYNE–TV	980,094	979,887	7,642
53820	KYOU–TV	651,334	640,935	4,999
36003	KYTV	1,095,904	1,083,524	8,450
55644	KYTX	927,327	925,550	7,218
13815	KYUR	379,943	379,027	2,956
5237	KYUS–TV	12,496	12,356	96
33752	KYVE	301,951	259,559	2,024
55762	KYVV–TV	67,201	67,201	524
25453	KYW–TV	11,212,189	11,008,413	85,855
69531	KZJL	6,037,458	6,037,272	47,085
69571	KZJO	4,147,016	4,097,776	31,959
61062	KZSD–TV	41,207	35,825	279
33079	KZTV	567,635	564,464	4,402
57292	WAAY–TV	1,531,377	1,452,612	11,329
1328	WABC–TV	20,948,273	20,560,001	160,347
4190	WABE–TV	5,308,575	5,291,523	41,269
43203	WABG–TV	393,020	392,348	3,060
17005	WABI–TV	530,773	510,729	3,983
16820	WABM	1,772,367	1,742,240	13,588
23917	WABW–TV	1,097,560	1,096,376	8,551
19199	WACH	1,403,222	1,400,385	10,922
189358	WACP	9,415,263	9,301,049	72,539
23930	WACS–TV	786,536	783,207	6,108
60018	WACX	4,292,829	4,288,149	33,443
361	WACY–TV	946,580	946,071	7,378
455	WADL	4,610,065	4,606,521	35,926
589	WAFB	1,857,882	1,857,418	14,486
591	WAFF	1,527,517	1,456,436	11,359
70689	WAGA–TV	6,000,355	5,923,191	46,195
48305	WAGM–TV	64,721	63,331	494
37809	WAGV	1,614,321	1,282,063	9,999
706	WAIQ	611,733	609,794	4,756
701	WAKA	799,637	793,645	6,190
4143	WALA–TV	1,320,419	1,318,127	10,280
70713	WALB	773,899	772,467	6,024
60536	WAMI–DT	5,449,193	5,449,193	42,498
70852	WAND	1,388,118	1,386,074	10,810
39270	WANE–TV	1,146,442	1,146,442	8,941
72120	WANF	6,027,276	5,961,471	46,494
52280	WAOE	2,963,253	2,907,224	22,673
64546	WAOW	636,957	629,068	4,906
52073	WAPA–TV[27]	3,759,648	2,784,044	21,713
49712	WAPT	793,621	791,620	6,174
67792	WAQP	2,135,670	2,131,399	16,623
13206	WATC–DT	5,732,204	5,705,819	44,500
71082	WATE–TV	1,874,433	1,638,059	12,775
22819	WATL	5,882,837	5,819,099	45,383
20287	WATM–TV	893,989	749,183	5,843
11907	WATN–TV	1,787,595	1,784,560	13,918
13989	WAVE	1,891,797	1,880,563	14,667
71127	WAVY–TV	2,080,708	2,080,691	16,227
54938	WAWD	579,079	579,023	4,516
65247	WAWV–TV	705,790	700,361	5,462
12793	WAXN–TV	2,677,951	2,669,224	20,817
65696	WBAL–TV	9,743,335	9,344,875	72,881
74417	WBAY–TV	1,226,036	1,225,443	9,557
71085	WBBH–TV	2,017,267	2,017,267	15,733
65204	WBBJ–TV	662,148	658,839	5,138
9617	WBBM–TV	9,914,233	9,907,806	77,271
9088	WBBZ–TV	1,269,256	1,260,686	9,832
70138	WBDT	3,831,757	3,819,550	29,789
51349	WBEC–TV	5,421,355	5,421,355	42,281
10758	WBFF	8,523,983	8,381,042	65,364
12497	WBFS–TV	5,349,613	5,349,613	41,722
6568	WBGU–TV	1,343,816	1,343,816	10,480

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
81594	WBIF	309,707	309,707	2,415
84802	WBIH	718,439	706,994	5,514
717	WBIQ	1,563,080	1,532,266	11,950
46984	WBIR–TV	1,978,347	1,701,857	13,273
67048	WBKB–TV	136,823	130,625	1,019
34167	WBKI	2,104,090	2,085,393	16,264
4692	WBKO	963,413	862,651	6,728
76001	WBKP	55,655	55,305	431
68427	WBMM	562,284	562,123	4,384
73692	WBNA	1,699,683	1,666,248	12,995
23337	WBNG–TV	1,435,634	1,051,932	8,204
71217	WBNS–TV	2,847,721	2,784,795	21,719
72958	WBNX–TV	3,639,256	3,630,531	28,315
71218	WBOC–TV	813,888	813,888	6,348
71220	WBOY–TV	711,302	621,367	4,846
60850	WBPH–TV	10,613,847	9,474,797	73,894
7692	WBPX–TV	6,833,712	6,761,949	52,736
5981	WBRA–TV	1,726,408	1,677,204	13,081
71221	WBRC	1,884,007	1,849,135	14,421
71225	WBRE–TV	2,879,196	2,244,735	17,507
38616	WBRZ–TV	2,223,336	2,222,309	17,332
82627	WBSF	1,836,543	1,832,446	14,291
30826	WBTV	4,433,795	4,296,893	33,511
66407	WBTW	1,975,457	1,959,172	15,280
16363	WBUI	981,884	981,868	7,658
59281	WBUP	126,472	112,603	878
60830	WBUY–TV	1,569,254	1,567,815	12,227
72971	WBXX–TV	2,142,759	1,984,544	15,477
25456	WBZ–TV	7,960,556	7,730,847	60,293
63153	WCAU	11,269,831	11,098,540	86,558
363	WCAV	1,032,270	874,886	6,823
46728	WCAX–TV	784,748	665,685	5,192
39659	WCBB	964,079	910,222	7,099
10587	WCBD–TV	1,149,489	1,149,489	8,965
12477	WCBI–TV	680,511	678,424	5,291
9610	WCBS–TV	22,087,789	21,511,236	167,766
49157	WCCB	3,642,232	3,574,928	27,881
9629	WCCO–TV	3,862,571	3,855,451	30,069
14050	WCCT–TV	5,818,471	5,307,612	41,394
69544	WCCU	694,550	693,317	5,407
3001	WCCV–TV	3,391,703	2,062,994	16,089
23937	WCES–TV	1,098,868	1,097,706	8,561
65666	WCET	3,123,290	3,110,519	24,259
46755	WCFE–TV	459,417	419,756	3,274
71280	WCHS–TV	1,352,824	1,274,766	9,942
42124	WCIA	834,084	833,547	6,501
711	WCIQ	3,186,320	3,016,907	23,529
71428	WCIU–TV	10,052,136	10,049,244	78,374
9015	WCIV	1,152,800	1,152,800	8,991
42116	WCIX	554,002	549,911	4,289
16993	WCJB–TV	977,492	977,492	7,623
11125	WCLF	4,097,389	4,096,624	31,950
68007	WCLJ–TV	2,305,723	2,303,534	17,965
50781	WCMH–TV	2,756,260	2,712,989	21,159
9917	WCML	233,439	224,255	1,749
9908	WCMU–TV	707,702	699,551	5,456
9922	WCMV	425,499	411,288	3,208
9913	WCMW	106,975	104,859	818
32326	WCNC–TV	3,883,049	3,809,706	29,712
53734	WCNY–TV	1,342,821	1,279,429	9,978
73642	WCOV–TV	889,102	884,417	6,898
40618	WCPB	567,809	567,809	4,428
59438	WCPO–TV	3,330,885	3,313,654	25,843
10981	WCPX–TV	9,753,235	9,751,916	76,055
71297	WCSC–TV	1,028,018	1,028,018	8,018
39664	WCSH	1,755,325	1,548,824	12,079
69479	WCTE	612,760	541,314	4,222
18334	WCTI–TV	1,688,065	1,685,638	13,146
31590	WCTV	1,065,524	1,065,464	8,310
33081	WCTX	7,844,936	7,332,431	57,186
65684	WCVB–TV	7,780,868	7,618,496	59,417

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
9987	WCVE–TV	1,721,004	1,712,249	13,354
83304	WCVI–TV	50,601	50,495	394
34204	WCVN–TV	2,129,816	2,120,349	16,537
9989	WCVW	1,505,484	1,505,330	11,740
73042	WCWF	1,131,390	1,130,818	8,819
35385	WCWG	3,630,551	3,299,114	25,730
29712	WCWJ	1,661,270	1,661,132	12,955
73264	WCWN	1,909,223	1,621,751	12,648
2455	WCYB–TV	2,363,002	2,057,404	16,046
11291	WDAF–TV	2,539,581	2,537,411	19,789
21250	WDAM–TV	512,594	500,343	3,902
22129	WDAY–TV	339,239	338,856	2,643
22124	WDAZ–TV	151,720	151,659	1,183
71325	WDBB	1,792,728	1,762,643	13,747
71326	WDBD	940,665	939,489	7,327
71329	WDBJ	1,626,017	1,435,762	11,198
51567	WDCA	8,101,358	8,049,329	62,777
16530	WDCQ–TV	1,269,199	1,269,199	9,898
30576	WDCW	8,155,998	8,114,847	63,288
54385	WDEF–TV	1,730,762	1,530,403	11,936
32851	WDFX–TV	271,499	270,942	2,113
43846	WDHN	452,377	451,978	3,525
71338	WDIO–DT	341,506	327,469	2,554
714	WDIQ	663,062	620,124	4,836
53114	WDIV–TV	5,450,318	5,450,174	42,506
71427	WDJT–TV	3,267,652	3,256,507	25,397
39561	WDKA	658,699	658,277	5,134
64017	WDKY–TV	1,204,817	1,173,579	9,153
67893	WDLI–TV	4,147,298	4,114,920	32,092
72335	WDPB	596,888	596,888	4,655
83740	WDPM–DT	1,365,977	1,364,744	10,644
1283	WDPN–TV	11,594,463	11,467,616	89,436
6476	WDPX–TV	6,833,712	6,761,949	52,736
28476	WDRB	2,054,813	2,037,086	15,887
12171	WDSC–TV	3,389,559	3,389,559	26,435
17726	WDSE	330,994	316,643	2,469
71353	WDSI–TV	1,100,302	1,042,191	8,128
71357	WDSU	1,649,083	1,649,083	12,861
7908	WDTI	2,092,242	2,091,941	16,315
65690	WDTN	3,831,757	3,819,550	29,789
70592	WDTV	566,592	524,961	4,094
25045	WDVM–TV	3,074,837	2,646,508	20,640
4110	WDWL	2,638,361	1,977,410	15,422
49421	WEAO	3,960,217	3,945,408	30,770
71363	WEAR–TV	1,520,973	1,520,386	11,857
7893	WEAU	1,006,393	971,050	7,573
61003	WEBA–TV	641,354	632,282	4,931
19561	WECN	2,886,669	2,157,288	16,825
48666	WECT	1,156,807	1,156,807	9,022
13602	WEDH	5,328,800	4,724,167	36,844
13607	WEDN	3,451,170	2,643,344	20,615
69338	WEDQ	5,379,887	5,365,612	41,846
21808	WEDU	5,379,887	5,365,612	41,846
13594	WEDW	5,996,408	5,544,708	43,243
13595	WEDY	5,328,800	4,724,167	36,844
24801	WEEK–TV	752,596	752,539	5,869
6744	WEFS	3,380,743	3,380,743	26,366
24215	WEHT	857,558	844,070	6,583
721	WEIQ	1,055,632	1,055,193	8,229
18301	WEIU–TV	458,480	458,416	3,575
69271	WEKW–TV	1,263,049	773,108	6,029
60825	WELF–TV	1,477,691	1,387,044	10,818
26602	WELU	2,315,163	1,721,317	13,425
40761	WEMT	1,726,085	1,186,706	9,255
69237	WENH–TV	4,500,498	4,328,222	33,756
71508	WENY–TV	656,240	517,754	4,038
83946	WEPH	604,105	602,833	4,701
81508	WEPX–TV	950,012	950,012	7,409
25738	WESH	4,063,973	4,053,252	31,611
65670	WETA–TV	8,315,499	8,258,807	64,410
69944	WETK	670,087	558,842	4,358

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
60653	WETM–TV	870,206	770,731	6,011
18252	WETP–TV	2,167,383	1,888,574	14,729
2709	WEUX	380,569	373,680	2,914
72041	WEVV–TV	752,417	751,094	5,858
59441	WEWS–TV	4,112,984	4,078,299	31,807
72052	WEYI–TV	3,715,686	3,652,991	28,490
72054	WFAA	6,917,502	6,907,616	53,872
81669	WFBD	817,914	817,389	6,375
69532	WFDC–DT	8,155,998	8,114,847	63,288
10132	WFFF–TV	633,649	552,182	4,306
25040	WFFT–TV	1,095,429	1,095,411	8,543
11123	WFGC	3,018,351	3,018,351	23,540
6554	WFGX	1,493,866	1,493,319	11,646
13991	WFIE	743,079	740,909	5,778
715	WFIQ	546,563	544,258	4,245
64592	WFLA–TV	5,583,544	5,576,649	43,492
22211	WFLD	9,957,301	9,954,828	77,638
72060	WFLI–TV	1,294,209	1,189,897	9,280
39736	WFLX	5,740,086	5,740,086	44,767
72062	WFMJ–TV	4,328,477	3,822,691	29,813
72064	WFMY–TV	4,772,783	4,746,167	37,015
39884	WFMZ–TV	10,613,847	9,474,797	73,894
83943	WFNA	1,391,519	1,390,447	10,844
47902	WFOR–TV	5,398,266	5,398,266	42,101
11909	WFOX–TV	1,603,324	1,603,324	12,504
40626	WFPT	5,829,153	5,442,279	42,444
21245	WFPX–TV	2,637,949	2,634,141	20,544
25396	WFQX–TV	537,340	534,314	4,167
9635	WFRV–TV	1,263,353	1,256,376	9,798
53115	WFSB	4,752,788	4,370,519	34,086
6093	WFSG	364,961	364,796	2,845
21801	WFSU–TV	576,105	576,093	4,493
11913	WFTC	3,787,177	3,770,207	29,404
64588	WFTS–TV	5,236,379	5,236,287	40,838
16788	WFTT–TV	4,523,828	4,521,879	35,266
72076	WFTV	3,882,888	3,882,888	30,283
70649	WFTX–TV	1,758,172	1,758,172	13,712
60553	WFTY–DT	5,678,755	5,560,460	43,366
25395	WFUP	234,863	234,436	1,828
60555	WFUT–DT	20,538,272	20,130,459	156,997
22108	WFWA	1,035,114	1,034,862	8,071
9054	WFXB	1,393,865	1,393,510	10,868
3228	WFXG	1,070,032	1,057,760	8,249
70815	WFXL	793,637	785,106	6,123
19707	WFXP	583,315	562,500	4,387
24813	WFXR	1,426,061	1,286,450	10,033
6463	WFXT	7,494,070	7,400,830	57,719
22245	WFXU	218,273	218,273	1,702
43424	WFXV	702,682	612,494	4,777
25236	WFXW	274,078	270,967	2,113
41397	WFYI	2,389,627	2,388,970	18,632
53930	WGAL	6,287,688	5,610,833	43,759
2708	WGBA–TV	1,170,375	1,170,127	9,126
24314	WGBC	249,415	249,235	1,944
72099	WGBH–TV	7,711,842	7,601,732	59,286
12498	WGBO–DT	9,828,737	9,826,530	76,637
11113	WGBP–TV	1,820,589	1,812,232	14,134
72098	WGBX–TV	7,803,280	7,636,641	59,558
72096	WGBY–TV	4,470,009	3,739,675	29,166
62388	WGCU	1,510,671	1,510,671	11,782
54275	WGEM–TV	361,598	356,682	2,782
27387	WGEN–TV	43,037	43,037	336
7727	WGFL	877,163	877,163	6,841
25682	WGGB–TV	3,443,386	3,053,436	23,814
11027	WGGN–TV	4,002,841	3,981,382	31,051
9064	WGGS–TV	2,759,326	2,705,067	21,097
72106	WGHP	4,174,964	4,123,106	32,156
710	WGIQ	363,849	363,806	2,837
12520	WGMB–TV	1,742,708	1,742,659	13,591
25683	WGME–TV	1,495,724	1,325,465	10,337
24618	WGNM	742,458	741,502	5,783

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
72119	WGNO	1,641,765	1,641,765	12,804
9762	WGNT	2,128,079	2,127,891	16,595
72115	WGN–TV	9,983,395	9,981,137	77,843
40619	WGPT	578,294	344,300	2,685
65074	WGPX–TV	2,765,350	2,754,743	21,484
64547	WGRZ	1,878,725	1,812,309	14,134
63329	WGTA	1,061,654	1,030,538	8,037
66285	WGTE–TV	2,210,496	2,208,927	17,227
59279	WGTQ	116,301	112,633	878
59280	WGTU	358,543	353,477	2,757
23948	WGTV	5,989,342	5,917,966	46,154
7623	WGTW–TV	807,797	807,797	6,300
24783	WGVK	2,439,225	2,437,526	19,010
24784	WGVU–TV	1,825,744	1,784,264	13,915
21536	WGWG	986,963	986,963	7,697
56642	WGWW	1,677,166	1,647,976	12,853
58262	WGXA	779,955	779,087	6,076
73371	WHAM–TV	1,381,564	1,334,653	10,409
32327	WHAS–TV	1,955,983	1,925,901	15,020
6096	WHA–TV	1,635,777	1,628,950	12,704
13950	WHBF–TV	1,712,339	1,704,072	13,290
12521	WHBQ–TV	1,736,335	1,708,345	13,323
10894	WHBR	1,302,764	1,302,041	10,155
65128	WHDF	1,553,469	1,502,852	11,721
72145	WHDH	7,441,208	7,343,735	57,274
83929	WHDT	5,768,239	5,768,239	44,986
70041	WHEC–TV	1,322,243	1,279,606	9,980
67971	WHFT–TV	5,417,409	5,417,409	42,250
41458	WHIO–TV	3,877,520	3,868,597	30,171
713	WHIQ	1,278,174	1,225,940	9,561
61216	WHIZ–TV	911,245	840,696	6,557
65919	WHKY–TV	3,358,493	3,294,261	25,692
18780	WHLA–TV	554,446	515,561	4,021
48668	WHLT	484,432	483,532	3,771
24582	WHLV–TV	3,906,201	3,906,201	30,464
37102	WHMB–TV	2,959,585	2,889,145	22,532
61004	WHMC	774,921	774,921	6,044
36117	WHME–TV	1,455,358	1,455,110	11,348
37106	WHNO	1,499,653	1,499,653	11,696
72300	WHNS	2,549,610	2,270,868	17,710
48693	WHNT–TV	1,569,885	1,487,578	11,602
66221	WHO–DT	1,120,480	1,099,818	8,577
6866	WHOI	736,125	736,047	5,740
72313	WHP–TV	4,030,693	3,538,096	27,594
51980	WHPX–TV	5,579,464	5,114,336	39,887
73036	WHRM–TV	535,778	532,820	4,155
25932	WHRO–TV	2,169,238	2,169,237	16,918
68058	WHSG–TV	5,870,314	5,808,605	45,301
4688	WHSV–TV	845,013	711,912	5,552
9990	WHTJ	807,960	690,381	5,384
72326	WHTM–TV	3,211,085	2,799,192	21,831
11117	WHTN	1,914,755	1,905,733	14,863
27772	WHUT–TV	7,953,119	7,915,675	61,734
18793	WHWC–TV	1,123,941	1,091,281	8,511
72338	WHYY–TV	10,448,829	10,049,700	78,378
5360	WIAT	1,868,854	1,830,924	14,279
63160	WIBW–TV	1,234,347	1,181,009	9,211
25684	WICD	1,238,332	1,237,046	9,648
25686	WICS	1,101,798	1,099,718	8,577
24970	WICU–TV	740,115	683,435	5,330
62210	WICZ–TV	1,249,974	965,416	7,529
18410	WIDP	2,559,306	1,899,768	14,816
26025	WIFS	1,583,693	1,578,870	12,314
720	WIIQ	353,241	347,685	2,712
68939	WILL–TV	1,178,545	1,158,147	9,032
6863	WILX–TV	3,378,644	3,218,221	25,099
22093	WINK–TV	1,818,122	1,818,122	14,180
67787	WINM	1,001,485	971,031	7,573
41314	WINP–TV	2,935,057	2,883,944	22,492
3646	WIPB	1,965,353	1,965,174	15,326
48408	WIPL	850,656	799,165	6,233

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
53863	WIPM–TV [1]	2,280,935	1,648,150	2,251
53859	WIPR–TV [1]	3,596,802	2,811,148	21,924
10253	WIPX–TV	2,305,723	2,303,534	17,965
39887	WIRS [12]	1,091,825	757,978	4,676
71336	WIRT–DT	127,001	126,300	985
13990	WIS	2,644,715	2,600,887	20,284
65143	WISC–TV	1,734,112	1,697,537	13,239
13960	WISE–TV	1,070,155	1,070,155	8,346
39269	WISH–TV	2,912,963	2,855,253	22,268
65680	WISN–TV	3,003,636	2,997,695	23,379
73083	WITF–TV	2,412,561	2,191,501	17,092
73107	WITI	3,111,641	3,102,097	24,193
594	WITN–TV	1,861,458	1,836,905	14,326
61005	WITV	871,783	871,783	6,799
7780	WIVB–TV	1,900,503	1,820,106	14,195
11260	WIVT	855,138	613,934	4,788
60571	WIWN	3,338,845	3,323,941	25,923
62207	WIYC	639,641	637,499	4,972
73120	WJAC–TV	2,219,529	1,897,986	14,802
10259	WJAL	8,750,706	8,446,074	65,871
50780	WJAR	7,108,180	6,976,099	54,407
35576	WJAX–TV	1,630,782	1,630,782	12,718
27140	WJBF	1,601,088	1,588,444	12,388
73123	WJBK	5,748,623	5,711,224	44,542
37174	WJCL	938,086	938,086	7,316
73130	WJCT	1,618,817	1,617,292	12,613
29719	WJEB–TV	1,607,603	1,607,603	12,538
65749	WJET–TV	747,431	717,721	5,598
7651	WJFB	2,310,517	2,302,217	17,955
49699	WJFW–TV	277,530	268,295	2,092
73136	WJHG–TV	864,121	859,823	6,706
57826	WJHL–TV	2,034,663	1,462,129	11,403
68519	WJKT	655,780	655,373	5,111
1051	WJLA–TV	8,750,706	8,447,643	65,883
86537	WJLP	21,384,080	21,119,164	164,708
9630	WJMN–TV	160,991	154,424	1,204
61008	WJPM–TV	623,939	623,787	4,865
58340	WJPX [6 10 12]	3,254,481	2,500,195	19,499
21735	WJRT–TV	2,788,684	2,543,446	19,836
23918	WJSP–TV	4,225,860	4,188,428	32,666
41210	WJTC	1,381,529	1,379,283	10,757
48667	WJTV	987,206	980,717	7,649
73150	WJW	3,977,148	3,905,325	30,458
61007	WJWJ–TV	1,034,555	1,034,555	8,068
58342	WJWN–TV [6]	2,063,156	1,461,497	4,676
53116	WJXT	1,622,616	1,622,616	12,655
11893	WJXX	1,618,191	1,617,272	12,613
32334	WJYS	9,667,341	9,667,317	75,395
25455	WJZ–TV	9,743,335	9,350,346	72,923
73152	WJZY	4,432,745	4,301,117	33,544
64983	WKAQ–TV [3]	3,697,088	2,731,588	2,628
6104	WKAR–TV	1,693,373	1,689,830	13,179
34171	WKAS	542,308	512,994	4,001
51570	WKBD–TV	5,065,617	5,065,350	39,505
73153	WKBN–TV	4,898,622	4,535,576	35,373
13929	WKBS–TV	1,082,894	937,847	7,314
74424	WKBT–DT	866,325	824,795	6,433
54176	WKBW–TV	2,247,191	2,161,366	16,856
53465	WKCF	4,241,181	4,240,354	33,071
73155	WKEF	3,730,595	3,716,127	28,982
34177	WKGB–TV	413,268	411,587	3,210
34196	WKHA	511,281	400,721	3,125
34207	WKLE	856,237	846,630	6,603
34212	WKMA–TV	524,617	524,035	4,087
71293	WKMG–TV	3,817,673	3,817,673	29,774
34195	WKMJ–TV	1,477,906	1,470,645	11,470
34202	WKMR	463,316	428,462	3,342
34174	WKMU	344,430	344,050	2,683
42061	WKNO	1,645,867	1,642,092	12,807
83931	WKNX–TV	1,684,178	1,459,493	11,383
34205	WKOH	584,645	579,258	4,518

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
67869	WKOI–TV	3,831,757	3,819,550	29,789
34211	WKON	1,080,274	1,072,320	8,363
18267	WKOP–TV	1,555,654	1,382,098	10,779
64545	WKOW	1,918,224	1,899,746	14,816
21432	WKPC–TV	1,525,919	1,517,701	11,837
65758	WKPD	283,454	282,250	2,201
34200	WKPI–TV	606,666	481,220	3,753
27504	WKPT–TV	1,131,213	887,806	6,924
58341	WKPV [10]	1,132,932	731,199	4,676
11289	WKRC–TV	3,281,914	3,229,223	25,185
73187	WKRG–TV	1,526,600	1,526,075	11,902
73188	WKRN–TV	2,409,767	2,388,588	18,629
34222	WKSO–TV	658,441	642,090	5,008
40902	WKTC	1,387,229	1,386,779	10,815
60654	WKTV	1,573,503	1,342,387	10,469
73195	WKYC	4,180,327	4,124,135	32,164
24914	WKYT–TV	1,174,615	1,156,978	9,023
71861	WKYU–TV	411,448	409,310	3,192
34181	WKZT–TV	1,044,532	1,020,878	7,962
18819	WLAE–TV	1,397,967	1,397,967	10,903
36533	WLAJ	4,100,475	4,063,963	31,695
2710	WLAX	469,017	447,381	3,489
68542	WLBT	948,671	947,857	7,392
39644	WLBZ	373,129	364,346	2,842
69328	WLED–TV	332,718	174,998	1,365
63046	WLEF–TV	200,517	199,188	1,553
73203	WLEX–TV	969,481	964,735	7,524
37806	WLFB	798,916	688,519	5,370
37808	WLFG	1,614,321	1,282,063	9,999
73204	WLFI–TV	2,243,009	2,221,313	17,324
73205	WLFL	3,747,583	3,743,960	29,199
19777	WLII–DT [4 8]	2,801,102	2,153,564	16,796
37503	WLIO	1,067,232	1,050,170	8,190
38336	WLIW	20,027,920	19,717,729	153,779
27696	WLJC–TV	1,401,072	1,281,256	9,993
71645	WLJT–DT	385,493	385,380	3,006
53939	WLKY	1,927,997	1,919,810	14,973
11033	WLLA	2,081,693	2,081,436	16,233
1222	WLMA	1,646,714	1,644,206	12,823
17076	WLMB	2,754,484	2,747,490	21,428
68518	WLMT	1,736,552	1,733,496	13,520
22591	WLNE–TV	6,429,522	6,381,825	49,772
74420	WLNS–TV	4,100,475	4,063,963	31,695
73206	WLNY–TV	7,501,199	7,415,578	57,834
84253	WLOO	913,960	912,674	7,118
56537	WLOS	3,086,751	2,544,410	19,844
37732	WLOV–TV	609,526	607,780	4,740
13995	WLOX	1,182,149	1,170,659	9,130
38586	WLPB–TV	1,219,624	1,219,407	9,510
73189	WLPX–TV	1,066,912	1,022,543	7,975
66358	WLRN–TV	5,447,399	5,447,399	42,484
73226	WLS–TV	10,174,464	10,170,757	79,322
73230	WLTV–DT	5,427,398	5,427,398	42,328
37176	WLTX	1,580,677	1,578,645	12,312
37179	WLTZ	689,521	685,358	5,345
21259	WLUC–TV	92,246	85,393	666
4150	WLUK–TV	1,187,616	1,186,861	9,256
73238	WLVI	7,441,208	7,343,735	57,274
36989	WLVT–TV	10,613,847	9,474,797	73,894
3978	WLWC	3,281,532	3,150,875	24,574
46979	WLWT	3,367,381	3,355,009	26,166
54452	WLXI	4,184,851	4,166,318	32,493
55350	WLYH	3,211,085	2,799,192	21,831
43192	WMAB–TV	405,483	399,560	3,116
43170	WMAE–TV	686,076	653,173	5,094
43197	WMAH–TV	1,257,393	1,256,995	9,803
43176	WMAO–TV	369,696	369,343	2,881
47905	WMAQ–TV	9,914,395	9,913,272	77,314
59442	WMAR–TV	9,198,495	9,072,076	70,753
43184	WMAU–TV	642,328	636,504	4,964
43193	WMAV–TV	1,008,339	1,008,208	7,863

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
43169	WMAW–TV	726,173	715,450	5,580
46991	WMAZ–TV	1,185,678	1,136,616	8,864
66398	WMBB	935,027	914,607	7,133
43952	WMBC–TV	18,706,132	18,458,331	143,957
42121	WMBD–TV	742,729	742,660	5,792
83969	WMBF–TV	445,363	445,363	3,473
60829	WMCF–TV	612,942	609,635	4,755
9739	WMCN–TV	10,448,829	10,049,700	78,378
19184	WMC–TV	2,047,403	2,043,125	15,934
189357	WMDE	6,384,827	6,257,910	48,805
73255	WMDN	278,227	278,018	2,168
16455	WMDT	731,868	731,868	5,708
39656	WMEA–TV	902,755	853,857	6,659
39648	WMEB–TV	511,761	494,574	3,857
70537	WMEC	218,027	217,839	1,699
39649	WMED–TV	30,488	29,577	231
39662	WMEM–TV	71,700	69,981	546
41893	WMFD–TV	1,561,367	1,324,244	10,328
41436	WMFP	5,792,048	5,564,295	43,396
61111	WMGM–TV	807,797	807,797	6,300
43847	WMGT–TV	601,894	601,309	4,690
73263	WMHT	1,719,949	1,550,977	12,096
68545	WMLW–TV	1,843,933	1,843,663	14,379
53819	WMOR–TV	5,394,541	5,394,541	42,072
81503	WMOW	121,150	105,957	826
65944	WMPB	7,452,728	7,343,061	57,269
43168	WMPN–TV	856,237	854,089	6,661
65942	WMPT	8,637,742	8,584,398	66,950
60827	WMPV–TV	1,423,052	1,422,411	11,093
10221	WMSN–TV	1,947,942	1,927,158	15,030
2174	WMTJ[11]	3,143,148	2,365,308	18,447
6870	WMTV	1,548,616	1,545,459	12,053
73288	WMTW	1,940,292	1,658,816	12,937
23935	WMUM–TV	925,814	920,835	7,182
73292	WMUR–TV	5,242,334	5,057,770	39,446
42663	WMVS	3,172,534	3,112,231	24,272
42665	WMVT	3,172,534	3,112,231	24,272
81946	WMWC–TV	946,858	916,989	7,152
56548	WMYA–TV	1,650,798	1,571,594	12,257
74211	WMYD	5,750,989	5,750,873	44,851
20624	WMYT–TV	4,432,745	4,301,117	33,544
25544	WMYV	3,901,915	3,875,210	30,223
73310	WNAB	2,176,984	2,166,809	16,899
73311	WNAC–TV	7,310,183	6,959,064	54,274
47535	WNBC	21,952,082	21,399,204	166,892
83965	WNBW–DT	1,400,631	1,396,012	10,887
72307	WNCF	667,683	665,950	5,194
50782	WNCN	3,795,494	3,783,131	29,505
57838	WNCT–TV	1,935,414	1,887,929	14,724
41674	WNDU–TV	1,863,764	1,835,398	14,314
28462	WNDY–TV	2,912,963	2,855,253	22,268
71928	WNED–TV	1,387,961	1,370,480	10,688
60931	WNEH	1,261,482	1,255,218	9,789
41221	WNEM–TV	1,475,094	1,471,908	11,479
49439	WNEO	3,353,869	3,271,369	25,513
73318	WNEP–TV	3,429,213	2,838,000	22,134
18795	WNET	21,113,760	20,615,190	160,778
51864	WNEU	7,135,190	7,067,520	55,120
23942	WNGH–TV	5,744,856	5,595,366	43,638
67802	WNIN	908,275	891,946	6,956
41671	WNIT	1,305,447	1,305,447	10,181
48457	WNJB	20,787,272	20,036,393	156,264
48477	WNJN	20,787,272	20,036,393	156,264
48481	WNJS	7,383,483	7,343,269	57,270
48465	WNJT	7,383,483	7,343,269	57,270
73333	WNJU	21,952,082	21,399,204	166,892
73336	WNJX–TV[2]	1,628,732	1,170,083	2,462
61217	WNKY	379,002	377,357	2,943
71905	WNLO	1,900,503	1,820,106	14,195
4318	WNMU	181,736	179,662	1,401
73344	WNNE	792,551	676,539	5,276

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
54280	WNOL–TV	1,632,389	1,632,389	12,731
71676	WNPB–TV	2,130,047	1,941,707	15,143
62137	WNPI–DT	167,931	161,748	1,261
41398	WNPT	2,266,543	2,235,316	17,433
28468	WNPX–TV	2,084,890	2,071,017	16,152
61009	WNSC–TV	2,431,154	2,425,044	18,913
61010	WNTV	2,419,841	2,211,019	17,244
16539	WNTZ–TV	344,704	343,849	2,682
7933	WNUV	9,098,694	8,906,508	69,462
9999	WNVC	807,960	690,381	5,384
10019	WNVT	1,721,004	1,712,249	13,354
73354	WNWO–TV	2,872,428	2,872,250	22,401
136751	WNYA	1,923,118	1,651,777	12,882
30303	WNYB	1,785,269	1,756,096	13,696
6048	WNYE–TV	19,414,613	19,180,858	149,592
34329	WNYI	1,627,542	1,338,811	10,441
67784	WNYO–TV	1,430,491	1,409,756	10,995
73363	WNYT	1,679,494	1,516,775	11,829
22206	WNYW	20,075,874	19,753,060	154,054
69618	WOAI–TV	2,525,811	2,513,887	19,606
66804	WOAY–TV	581,486	443,210	3,457
41225	WOFL	4,048,104	4,043,672	31,537
70651	WOGX	1,112,408	1,112,408	8,676
8661	WOI–DT	1,173,757	1,170,432	9,128
39746	WOIO	3,821,233	3,745,335	29,210
71725	WOLE–DT[4]	1,784,094	1,312,984	7,379
73375	WOLF–TV	2,990,646	2,522,858	19,676
60963	WOLO–TV	2,635,715	2,594,980	20,238
36838	WOOD–TV	2,507,053	2,501,084	19,506
67602	WOPX–TV	3,877,863	3,877,805	30,243
64865	WORA–TV[3 13]	3,594,115	2,762,755	21,547
73901	WORO–DT	3,236,498	2,516,588	19,627
60357	WOST	1,193,381	853,762	6,658
66185	WOSU–TV	2,843,651	2,776,901	21,657
131	WOTF–TV	3,451,383	3,451,383	26,917
10212	WOTV	2,368,797	2,368,397	18,471
50147	WOUB–TV	756,762	734,988	5,732
50141	WOUC–TV	1,713,515	1,649,853	12,867
23342	WOWK–TV	1,159,175	1,083,663	8,451
65528	WOWT	1,380,979	1,377,287	10,741
31570	WPAN	1,254,821	1,254,636	9,785
51988	WPBF	3,190,307	3,186,405	24,851
21253	WPBN–TV	442,005	430,953	3,361
62136	WPBS–TV	338,448	301,692	2,353
13456	WPBT	5,416,604	5,416,604	42,244
13924	WPCB–TV	2,934,614	2,800,516	21,841
64033	WPCH–TV	5,948,778	5,874,163	45,813
4354	WPCT	195,270	194,869	1,520
69880	WPCW	3,393,365	3,188,441	24,867
17012	WPDE–TV	1,772,233	1,769,553	13,801
52527	WPEC	5,764,571	5,764,571	44,958
84088	WPFO	1,329,690	1,209,873	9,436
54728	WPGA–TV	559,495	559,025	4,360
60820	WPGD–TV	2,355,629	2,343,715	18,279
73875	WPGH–TV	3,236,098	3,121,767	24,347
2942	WPGX	425,098	422,872	3,298
73879	WPHL–TV	10,421,216	10,246,856	79,915
73881	WPIX	20,948,273	20,501,774	159,893
53113	WPLG	5,588,748	5,588,748	43,587
11906	WPMI–TV	1,468,001	1,467,594	11,446
10213	WPMT	2,412,561	2,191,501	17,092
18798	WPNE–TV	1,161,295	1,160,631	9,052
73907	WPNT	3,172,170	3,064,423	23,899
28480	WPPT	10,613,847	9,474,797	73,894
51984	WPPX–TV	8,044,823	7,839,141	61,137
47404	WPRI–TV	7,254,721	6,990,606	54,520
51991	WPSD–TV	883,814	879,213	6,857
12499	WPSG	10,798,264	10,529,460	82,119
66219	WPSU–TV	1,055,133	868,013	6,770
73905	WPTA	1,099,180	1,099,180	8,573
25067	WPTD	3,423,417	3,411,727	26,608

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
25065	WPTO	2,961,254	2,951,883	23,022
59443	WPTV–TV	5,840,102	5,840,102	45,547
57476	WPTZ	792,551	676,539	5,276
8616	WPVI–TV	11,491,587	11,302,701	88,150
48772	WPWR–TV	9,957,301	9,954,828	77,638
51969	WPXA–TV	6,587,205	6,458,510	50,370
71236	WPXC–TV	1,561,014	1,561,014	12,174
5800	WPXD–TV	5,249,447	5,249,447	40,940
37104	WPXE–TV	3,067,071	3,057,388	23,845
48406	WPXG–TV	2,577,848	2,512,150	19,592
73312	WPXH–TV	1,471,601	1,451,634	11,321
73910	WPXI	3,300,896	3,197,864	24,940
2325	WPXJ–TV	2,357,870	2,289,706	17,857
52628	WPXK–TV	1,801,997	1,577,806	12,305
21729	WPXL–TV	1,639,180	1,639,180	12,784
48608	WPXM–TV	5,153,621	5,153,621	40,193
73356	WPXN–TV	20,878,066	20,454,468	159,524
27290	WPXP–TV	5,565,072	5,565,072	43,402
50063	WPXQ–TV	3,281,532	3,150,875	24,574
70251	WPXR–TV	1,375,640	1,200,331	9,361
40861	WPXS	2,339,305	2,251,498	17,559
53065	WPXT	1,002,128	952,535	7,429
37971	WPXU–TV	700,488	700,488	5,463
67077	WPXV–TV	1,919,794	1,919,794	14,972
74091	WPXW–TV	8,075,268	8,024,342	62,582
21726	WPXX–TV	1,562,675	1,560,834	12,173
73319	WQAD–TV	1,101,012	1,089,523	8,497
65130	WQCW	1,307,345	1,236,020	9,640
71561	WQEC	183,969	183,690	1,433
41315	WQED	3,529,305	3,426,684	26,725
3255	WQHA	3,322,840	2,368,215	18,470
60556	WQHS–DT	3,996,567	3,952,672	30,827
53716	WQLN	602,232	577,633	4,505
52075	WQMY	410,269	254,586	1,986
64550	WQOW	369,066	358,576	2,797
5468	WQPT–TV	941,381	933,107	7,277
64690	WQPX–TV	1,644,283	1,212,587	9,457
52408	WQRF–TV	1,375,774	1,354,979	10,567
2175	WQTO [11]	2,864,201	1,598,365	5,728
8688	WRAL–TV	3,852,675	3,848,801	30,017
10133	WRAY–TV	4,184,851	4,166,318	32,493
64611	WRAZ	3,800,594	3,797,515	29,617
136749	WRBJ–TV	1,030,831	1,028,010	8,017
3359	WRBL	1,493,140	1,461,459	11,398
57221	WRBU	2,933,497	2,929,776	22,849
54940	WRBW	4,080,267	4,077,341	31,799
59137	WRCB	1,587,742	1,363,582	10,635
47904	WRC–TV	8,188,601	8,146,696	63,536
54963	WRDC	3,972,477	3,966,864	30,938
55454	WRDQ	3,930,315	3,930,315	30,653
73937	WRDW–TV	1,564,584	1,533,682	11,961
66174	WREG–TV	1,642,307	1,638,585	12,779
61011	WRET–TV	2,419,841	2,211,019	17,244
73940	WREX	2,303,027	2,047,951	15,972
54443	WRFB [13]	2,674,527	1,975,375	2,628
73942	WRGB	1,759,432	1,550,958	12,096
411	WRGT–TV	3,451,036	3,416,078	26,642
74416	WRIC–TV	2,059,152	1,996,075	15,567
61012	WRJA–TV	1,204,291	1,201,900	9,374
412	WRLH–TV	2,017,508	1,959,111	15,279
61013	WRLK–TV	1,229,094	1,228,616	9,582
43870	WRLM	3,960,217	3,945,408	30,770
74156	WRNN–TV	19,853,836	19,615,370	152,980
73964	WROC–TV	1,203,412	1,185,203	9,243
159007	WRPT	110,009	109,937	857
20590	WRPX–TV	2,637,949	2,634,141	20,544
62009	WRSP–TV	1,102,162	1,100,077	8,580
40877	WRTV	2,919,683	2,895,164	22,579
15320	WRUA	2,985,428	2,224,902	17,352
71580	WRXY–TV	1,784,000	1,784,000	13,913
48662	WSAV–TV	1,000,315	1,000,309	7,801

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
6867	WSAW–TV	652,442	646,386	5,041
36912	WSAZ–TV	1,239,187	1,168,954	9,117
56092	WSBE–TV	7,535,710	7,266,304	56,670
73982	WSBK–TV	7,290,901	7,225,463	56,351
72053	WSBS–TV	42,952	42,952	335
73983	WSBT–TV	1,763,215	1,752,698	13,669
23960	WSB–TV	5,897,425	5,828,269	45,455
69446	WSCG	867,516	867,490	6,766
64971	WSCV	5,465,435	5,465,435	42,625
70536	WSEC	538,090	536,891	4,187
49711	WSEE–TV	613,176	595,476	4,644
21258	WSES	1,829,499	1,796,561	14,011
73988	WSET–TV	1,575,886	1,340,273	10,453
13993	WSFA	1,166,744	1,132,826	8,835
11118	WSFJ–TV	1,675,987	1,667,150	13,002
10203	WSFL–TV	5,344,129	5,344,129	41,679
72871	WSFX–TV	970,833	970,833	7,572
73999	WSIL–TV	672,560	669,176	5,219
4297	WSIU–TV	1,019,939	937,070	7,308
74007	WSJV	1,651,178	1,644,683	12,827
78908	WSKA	546,588	431,354	3,364
74034	WSKG–TV	892,402	633,163	4,938
76324	WSKY–TV	1,934,585	1,934,519	15,087
57840	WSLS–TV	1,447,286	1,277,753	9,965
21737	WSMH	2,339,224	2,327,660	18,153
41232	WSMV–TV	2,447,769	2,404,766	18,755
70119	WSNS–TV	9,914,395	9,913,272	77,314
74070	WSOC–TV	3,706,808	3,638,832	28,379
66391	WSPA–TV	3,388,945	3,227,025	25,168
64352	WSPX–TV	1,298,295	1,174,763	9,162
17611	WSRE	1,354,495	1,353,634	10,557
63867	WSST–TV	331,907	331,601	2,586
60341	WSTE–DT	3,723,967	3,000,000	23,397
21252	WSTM–TV	1,455,586	1,379,393	10,758
11204	WSTR–TV	3,297,280	3,286,795	25,634
19776	WSUR–DT[8]	3,714,790	3,000,000	7,379
2370	WSVI	50,601	50,601	395
63840	WSVN	5,588,748	5,588,748	43,587
73374	WSWB	1,530,002	1,102,316	8,597
28155	WSWG	381,004	380,910	2,971
71680	WSWP–TV	902,592	694,697	5,418
74094	WSYM–TV	1,568,403	1,567,920	12,228
73113	WSYR–TV	1,329,977	1,243,098	9,695
40758	WSYT	1,970,721	1,739,071	13,563
56549	WSYX	2,635,937	2,592,420	20,218
65681	WTAE–TV	2,995,755	2,860,979	22,313
23341	WTAJ–TV	1,187,718	948,598	7,398
4685	WTAP–TV	512,358	494,914	3,860
416	WTAT–TV	1,111,476	1,111,476	8,668
67993	WTBY–TV	15,858,470	15,766,438	122,962
29715	WTCE–TV	2,620,599	2,620,599	20,438
65667	WTCI	1,216,209	1,104,698	8,616
67786	WTCT	608,457	607,620	4,739
28954	WTCV[59]	3,254,481	2,500,195	19,499
74422	WTEN	1,902,431	1,613,747	12,586
9881	WTGL	3,707,507	3,707,507	28,915
27245	WTGS	966,519	966,357	7,537
70655	WTHI–TV	978,126	928,582	7,242
70162	WTHR	2,949,339	2,901,633	22,630
147	WTIC–TV	5,318,753	4,707,697	36,715
26681	WTIN–TV[7]	3,716,312	2,987,150	2,462
66536	WTIU	1,570,257	1,569,135	12,238
1002	WTJP–TV	1,947,743	1,907,300	14,875
4593	WTJR	334,527	334,221	2,607
70287	WTJX–TV	135,017	121,498	948
47401	WTKR	2,149,376	2,149,375	16,763
82735	WTLF	349,696	349,691	2,727
23486	WTLH	1,065,127	1,065,105	8,307
67781	WTLJ	1,622,365	1,621,227	12,644
65046	WTLV	1,757,600	1,739,021	13,563
74098	WTMJ–TV	3,096,406	3,085,983	24,068

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
74109	WTNH	7,845,782	7,332,431	57,186
19200	WTNZ	1,699,427	1,513,754	11,806
590	WTOC–TV	993,098	992,658	7,742
74112	WTOG	5,268,364	5,267,177	41,079
4686	WTOK–TV	417,919	412,276	3,215
13992	WTOL	4,487,440	4,479,518	34,936
21254	WTOM–TV	120,369	117,121	913
74122	WTOV–TV	3,892,886	3,619,899	28,232
82574	WTPC–TV	2,049,246	2,042,851	15,932
86496	WTPX–TV	255,972	255,791	1,995
6869	WTRF–TV	2,941,511	2,565,375	20,007
67798	WTSF	922,441	851,465	6,641
11290	WTSP	5,506,869	5,489,954	42,816
4108	WTTA	5,583,544	5,576,649	43,492
74137	WTTE	2,690,341	2,650,354	20,670
22207	WTTG	8,101,358	8,049,329	62,777
56526	WTTK	2,844,384	2,825,807	22,038
74138	WTTO	1,877,570	1,844,214	14,383
56523	WTTV	2,522,077	2,518,133	19,639
10802	WTTW	9,776,348	9,776,348	76,246
74148	WTVA	823,492	810,123	6,318
22590	WTVC	1,579,628	1,366,976	10,661
8617	WTVD	3,790,354	3,775,757	29,447
55305	WTVE	5,156,905	5,152,997	40,188
36504	WTVF	2,384,622	2,367,601	18,465
74150	WTVG	4,405,350	4,397,113	34,293
74151	WTVH	1,390,502	1,327,319	10,352
10645	WTVI	2,856,703	2,829,960	22,071
63154	WTVJ	5,458,451	5,458,451	42,570
595	WTVM	1,498,667	1,405,957	10,965
72945	WTVO	1,409,708	1,398,825	10,909
28311	WTVP	678,884	678,539	5,292
51597	WTVQ–DT	989,786	983,552	7,671
57832	WTVR–TV	1,816,197	1,809,035	14,109
16817	WTVS	5,511,091	5,510,837	42,979
68569	WTVT	5,473,148	5,460,179	42,584
3661	WTVW	839,003	834,187	6,506
35575	WTVX	3,157,609	3,157,609	24,626
4152	WTVY	974,532	971,173	7,574
40759	WTVZ–TV	2,156,534	2,156,346	16,817
66908	WTWC–TV	1,061,101	1,061,079	8,275
20426	WTWO	737,341	731,294	5,703
81692	WTWV	1,527,511	1,526,625	11,906
51568	WTXF–TV	10,784,256	10,492,549	81,831
41065	WTXL–TV	1,054,514	1,054,322	8,223
8532	WUAB	3,821,233	3,745,335	29,210
12855	WUCF–TV	3,707,507	3,707,507	28,915
36395	WUCW	3,664,480	3,657,236	28,523
69440	WUFT	1,372,142	1,372,142	10,701
413	WUHF	1,152,580	1,147,972	8,953
8156	WUJA	2,638,361	1,977,410	15,422
69080	WUNC–TV	4,184,851	4,166,318	32,493
69292	WUND–TV	1,504,532	1,504,532	11,734
69114	WUNE–TV	3,146,865	2,625,942	20,480
69300	WUNF–TV	2,625,583	2,331,723	18,185
69124	WUNG–TV	3,605,143	3,588,220	27,985
60551	WUNI	7,209,571	7,084,349	55,251
69332	WUNJ–TV	1,116,458	1,116,458	8,707
69149	WUNK–TV	1,991,039	1,985,696	15,486
69360	WUNL–TV	3,055,263	2,834,274	22,105
69444	WUNM–TV	1,357,346	1,357,346	10,586
69397	WUNP–TV	1,402,186	1,393,524	10,868
69416	WUNU	1,202,495	1,201,481	9,370
83822	WUNW	1,856,918	1,333,273	10,398
6900	WUPA	5,966,454	5,888,379	45,923
13938	WUPL	1,721,320	1,721,320	13,425
10897	WUPV	1,933,664	1,914,643	14,932
19190	WUPW	2,100,914	2,099,572	16,375
23128	WUPX–TV	1,102,435	1,089,118	8,494
65593	WUSA	8,750,706	8,446,074	65,871
4301	WUSI–TV	339,507	339,507	2,648

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
60552	WUTB	8,523,983	8,381,042	65,364
30577	WUTF–TV	7,918,927	7,709,189	60,124
57837	WUTR	526,114	481,957	3,759
415	WUTV	1,589,376	1,557,474	12,147
16517	WUVC–DT	3,768,817	3,748,841	29,237
48813	WUVG–DT	6,029,495	5,965,975	46,529
3072	WUVN	1,233,568	1,157,140	9,025
60560	WUVP–DT	10,421,216	10,246,856	79,915
9971	WUXP–TV	2,316,872	2,305,293	17,979
417	WVAH–TV	1,373,555	1,295,383	10,103
23947	WVAN–TV	1,026,862	1,025,950	8,001
65387	WVBT	1,885,169	1,885,169	14,702
72342	WVCY–TV	3,111,641	3,102,097	24,193
60559	WVEA–TV	4,553,004	4,552,113	35,502
74167	WVEC	2,098,679	2,092,868	16,322
5802	WVEN–TV	3,921,016	3,919,361	30,567
61573	WVEO[5]	1,091,825	757,978	4,676
69946	WVER	888,756	758,441	5,915
10976	WVFX	711,483	618,730	4,825
47929	WVIA–TV	3,429,213	2,838,000	22,134
3667	WVII–TV	368,022	346,874	2,705
70309	WVIR–TV	1,945,637	1,908,395	14,884
74170	WVIT	5,846,093	5,357,639	41,784
18753	WVIZ	3,695,223	3,689,173	28,772
70021	WVLA–TV	1,897,179	1,897,007	14,795
81750	WVLR	1,412,728	1,300,554	10,143
35908	WVLT–TV	1,888,607	1,633,633	12,741
74169	WVNS–TV	916,451	588,963	4,593
11259	WVNY	742,579	659,270	5,142
29000	WVOZ–TV[9]	1,132,932	731,199	4,676
71657	WVPB–TV	992,798	959,526	7,483
60111	WVPT	767,268	642,173	5,008
70491	WVPX–TV	4,147,298	4,114,920	32,092
66378	WVPY	756,696	632,649	4,934
67190	WVSN	2,948,832	2,137,333	16,669
66943	WVTA	760,072	579,703	4,521
69940	WVTB	455,880	257,445	2,008
74173	WVTM–TV	2,009,346	1,940,153	15,131
74174	WVTV	3,091,132	3,083,108	24,045
77496	WVUA	2,209,921	2,160,101	16,847
4149	WVUE–DT	1,658,125	1,658,125	12,932
4329	WVUT	273,293	273,215	2,131
74176	WVVA	1,037,632	722,666	5,636
3113	WVXF	85,191	78,556	613
12033	WWAY	1,208,625	1,208,625	9,426
30833	WWBT	1,924,502	1,892,842	14,762
20295	WWCP–TV	2,811,278	2,548,691	19,877
24812	WWCW	1,390,985	1,212,308	9,455
23671	WWDP	5,792,048	5,564,295	43,396
21158	WWHO	2,762,344	2,721,504	21,225
14682	WWJE–DT	7,209,571	7,084,349	55,251
72123	WWJ–TV	5,562,031	5,561,777	43,376
166512	WWJX	518,866	518,846	4,046
6868	WWLP	3,838,272	3,077,800	24,004
74192	WWL–TV	1,788,624	1,788,624	13,949
3133	WWMB	1,547,974	1,544,778	12,048
74195	WWMT	2,538,485	2,531,309	19,742
68851	WWNY–TV	375,600	346,623	2,703
74197	WWOR–TV	19,853,836	19,615,370	152,980
65943	WWPB	3,197,858	2,775,966	21,650
23264	WWPX–TV	2,299,441	2,231,612	17,404
68547	WWRS–TV	2,324,155	2,321,066	18,102
61251	WWSB	3,340,133	3,340,133	26,050
23142	WWSI	11,269,831	11,098,540	86,558
16747	WWTI	196,531	190,097	1,483
998	WWTO–TV	6,760,133	6,760,133	52,722
26994	WWTV	1,034,174	1,022,322	7,973
84214	WWTW	1,527,511	1,526,625	11,906
26993	WWUP–TV	116,638	110,592	863
23338	WXBU	4,030,693	3,538,096	27,594
61504	WXCW	1,687,947	1,687,947	13,164

TABLE 7—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
61084	WXEL–TV	5,416,604	5,416,604	42,244
60539	WXFT–DT	10,174,464	10,170,757	79,322
23929	WXGA–TV	608,494	606,849	4,733
51163	WXIA–TV	6,179,680	6,035,625	47,072
53921	WXII–TV	3,630,551	3,299,114	25,730
146	WXIN	2,836,532	2,814,815	21,953
39738	WXIX–TV	2,911,054	2,900,875	22,624
414	WXLV–TV	4,364,244	4,334,365	33,804
68433	WXMI	1,988,970	1,988,589	15,509
64549	WXOW	425,378	413,264	3,223
6601	WXPX–TV	4,594,588	4,592,639	35,818
74215	WXTV–DT	20,538,272	20,130,459	156,997
12472	WXTX	699,095	694,837	5,419
11970	WXXA–TV	1,680,670	1,537,868	11,994
57274	WXXI–TV	1,184,860	1,168,696	9,115
53517	WXXV–TV	1,191,123	1,189,584	9,278
10267	WXYZ–TV	5,622,543	5,622,140	43,847
77515	WYCI	35,873	26,508	207
70149	WYCW	3,388,945	3,227,025	25,168
62219	WYDC	560,266	449,486	3,506
18783	WYDN	2,577,848	2,512,150	19,592
35582	WYDO	1,330,728	1,330,728	10,378
25090	WYES–TV	1,872,245	1,872,059	14,600
53905	WYFF	2,626,363	2,416,551	18,847
49803	WYIN	6,956,141	6,956,141	54,251
24915	WYMT–TV	1,180,276	863,881	6,737
17010	WYOU	2,879,196	2,226,883	17,367
77789	WYOW	91,839	91,311	712
13933	WYPX–TV	1,529,500	1,413,583	11,025
4693	WYTV	4,898,622	4,535,576	35,373
5875	WYZZ–TV	1,042,140	1,036,721	8,085
15507	WZBJ	1,626,017	1,435,762	11,198
28119	WZDX	1,596,771	1,514,654	11,813
70493	WZME	5,996,408	5,544,708	43,243
81448	WZMQ	73,423	72,945	569
71871	WZPX–TV	2,039,157	2,039,157	15,903
136750	WZRB	952,279	951,693	7,422
418	WZTV	2,312,658	2,301,187	17,947
83270	WZVI	76,992	75,863	592
19183	WZVN–TV	1,981,488	1,981,488	15,454
49713	WZZM	1,574,546	1,548,835	12,079

[1] Call signs WIPM and WIPR are stations in Puerto Rico that are linked together with a total fee of $24,175.
[2] Call signs WNJX and WAPA are stations in Puerto Rico that are linked together with a total fee of $24,175.
[3] Call signs WKAQ and WORA are stations in Puerto Rico that are linked together with a total fee of $24,175.
[4] Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of $24,175.
[5] Call signs WVEO and WTCV are stations in Puerto Rico that are linked together with a total fee of $24,175.
[6] Call signs WJPX and WJWN are stations in Puerto Rico that are linked together with a total fee of $24,175.
[7] Call signs WAPA and WTIN are stations in Puerto Rico that are linked together with a total fee of $24,175.
[8] Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of $24,175.
[9] Call signs WVOZ and WTCV are stations in Puerto Rico that are linked together with a total fee of $24,175.
[10] Call signs WJPX and WKPV are stations in Puerto Rico that are linked together with a total fee of $24,175.
[11] Call signs WMTJ and WQTO are stations in Puerto Rico that are linked together with a total fee of $24,175.
[12] Call signs WIRS and WJPX are stations in Puerto Rico that are linked together with a total fee of $24,175.
[13] Call signs WRFB and WORA are stations in Puerto Rico that are linked together with a total fee of $24,175.

TABLE 8—FY 2022 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers)	.14

TABLE 8—FY 2022 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	Annual regulatory fee (U.S. $s)
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	590
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	590
AM Radio Construction Permits	655
FM Radio Construction Permits	1,145
AM and FM Broadcast Radio Station Fees	See Table Below
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	.008430
	See Table 7 fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees*
Digital TV Construction Permits	5,200
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	330
CARS (47 CFR part 78)	1,715
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.16
Interstate Telecommunication Service Providers (per revenue dollar)	.00452
Toll Free (per toll free subscriber) (47 CFR section 52.101(f) of the rules)	.12
Earth Stations (47 CFR part 25)	620
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	124,060
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	340,005
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	141,670
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	39
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2022 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	$1,050	$755	$655	$720	$1,145	$1,310
25,001–75,000	1,575	1,135	985	1,080	1,720	1,965
75,001–150,000	2,365	1,700	1,475	1,620	2,575	2,950
150,001–500,000	3,550	2,550	2,215	2,435	3,870	4,430
500,001–1,200,000	5,315	3,820	3,315	3,645	5,795	6,630
1,200,001–3,000,000	7,980	5,740	4,980	5,470	8,700	9,955
3,000,001–6,000,000	11,960	8,600	7,460	8,200	13,040	14,920
>6,000,000	17,945	12,905	11,195	12,305	19,570	22,390

FY 2022 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2021)	Fee ratio	FY 2022 regulatory fees
Less than 50 Gbps	.0625 Units	$8,610
50 Gbps or greater, but less than 250 Gbps	.125 Units	17,215
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	137,715
6,500 Gbps or greater	2.0 Units	275,430

VI. Initial Regulatory Flexibility Analysis

103. As required by the RFA, the Commission prepared this IRFA of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this NPRM. The Commission will send a copy of the NPRM, including the IRFA and the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

104. The Commission is required by Congress pursuant to sections 159 of the Communications Act, and the Commission's FY 2023 Appropriations

Act to assess and collect regulatory fees each year to recover the regulatory costs associated with the Commission's oversight and regulatory activities in an amount that can reasonably be expected to equal the amount of its annual appropriation. Accordingly for FY 2023, the Commission must recover $390,192,000 in regulatory fees. In the NPRM, we seek comment on the Commission's proposed fee calculation methodology and the regulatory fees for FY 2023 as set forth in Tables 2 and 3. Based on the record in response to the NOI, we specifically seek comment on reassigning certain indirect full time equivalents (FTEs) as direct FTEs based on their time spent primarily working on matters related to the oversight and regulation of regulatory fee payors without regard to the bureau or office in which they work. We also seek comment on several additional regulatory fee issues, including: (i) the calculation of television and radio broadcaster regulatory fees, including a new grid for the AM and FM radio stations; (ii) defining the category of operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) for regulatory fee purposes, including whether a separate regulatory fee category is necessary, and how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc; (iii) evaluating how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; and (iv) whether to continue in FY 2023 several of the temporary measures we implemented in FYs 2020 through 2022 to assist parties experiencing COVID–19 pandemic-related financial hardship in seeking regulatory fee relief.

B. Legal Basis

105. The proposed action is authorized pursuant to sections 4154(i), and (j), 159, and 303(r) of the Communications Act.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

106. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

107. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

108. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

109. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 5ll governmental jurisdictions.''

110. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

111. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

112. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of

these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

113. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

114. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

115. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

116. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services. Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

117. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

118. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that

1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

119. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

120. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

121. *Television Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

122. As of December 31, 2022, there were 1375 licensed commercial television stations. Of this total, 1282 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIAKelsey Media Access Pro Online Television Database (MAPro) on January 13, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of December 31, 2022, there were 383 licensed NCE television stations, 383 Class A TV stations, 1912 LPTV stations and 3122 TV translator stations. The Commission however does not compile, and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

123. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

124. The Commission estimates that as of December 31, 2022, there were 4,484 licensed commercial AM radio stations and 6,686 licensed commercial FM radio stations for a combined total of 11,170 commercial radio stations. Of this total, 11,168 stations (or 99.98%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the MAPro on January 13, 2023, and therefore, these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of December 31, 2022, there were 4207 licensed NCE FM radio stations, 2015 low power FM stations and 8950 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

125. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the United States. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system servicing 15,000 or fewer subscribers. Based on industry data, there are about 4139 cable systems (headends) in the United States. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates

that the majority of cable operators are small.

126. *Cable System Operators (Telecom Act Standard).* The Communications Act contains a size standard for a ''small cable system operator'', which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000,'' as small. For purposes of the Telecom Act Standard, the Commission determined that a cable systems operation that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

127. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

128. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

129. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

130. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

131. *RespOrgs.* Responsible Organizations, or RespOrgs (also referred to as Toll-Free Number (TFN) providers), are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber. Based on information on the website of SOMOS, the entity that maintains a registry of Toll-Free Number providers (SMS/800 TFN Registry) for the more than 42 million Toll-Free numbers in North America, and the TSS Registry, a centralized registry for the use of Toll-Free Numbers in text messaging and multimedia services, there were approximately 446 registered RespOrgs/Toll-Free Number providers in July 2021. RespOrgs are often wireline carriers, however they can include non-carrier entities. Accordingly, the description below for RespOrgs include both Carrier RespOrgs and Non-Carrier RespOrgs.

132. *Carrier RespOrgs.* Neither the Commission nor the SBA have developed a small business size standard for Carrier RespOrgs. *Wired Telecommunications Carriers,* and *Wireless Telecommunications Carriers (except Satellite)* are the closest industries with a SBA small business size applicable to Carrier RespOrgs.

133. *Wired Telecommunications Carriers* are establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired

(cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

134. *Wireless Telecommunications Carriers (except Satellite)* engage in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Based on this data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

135. *Non-Carrier RespOrgs.* Neither the Commission, nor the SBA have developed a small business size standard Non-Carrier RespOrgs. *Other Services Related to Advertising* and *Other Management Consulting Services*'' are the closest industries with an SBA small business size applicable to Non-Carrier RespOrgs.

136. The *Other Services Related to Advertising* industry contains establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services). The SBA small business size standard for this industry classifies a business as small that has annual receipts of $16.5 million or less. U.S. Census Bureau data for 2017 show that 5,650 firms operated in this industry for the entire year. Of that number, 3,693 firms operated with revenue of less than $10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

137. The *Other Management Consulting Services* industry contains establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has annual receipts of $16.5 million or less. U.S. Census Bureau data for 2017 show that 4,696 firms operated in this industry for the entire year. Of that number, 3,700 firms had revenue of less than $10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

138. The NPRM does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements for small entities. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory assessment for small entities is the amount assessed for their regulatory fee category and should not require small entities to hire professionals to comply. Small entities that qualify can take advantage of the exemption from payment of regulatory fees allowed under the de minimis threshold. Small entities may also be able to reduce their costs of compliance if the Commission maintains the flexibility options for regulatory fee payors that the Commission made available in FYs 2020 through 2022 as a result of the COVID–19 pandemic.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

139. The RFA requires an agency to describe any significant, specifically business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

140. *Assessment of Regulatory Fees.* In response to the comments to the NOI, for FY 2023 we propose to employ the same methodology to calculate regulatory fees. However, in addition to looking at the current allocation of direct FTEs within the Commission's core bureaus (*i.e.,* the Wireless Telecommunications Bureau, the Media Bureau, part of the Wireline Competition Bureau, and part of the International Bureau) as discussed in the NPRM, we also evaluated the work of certain indirect FTEs in non-core bureaus and offices to determine if, based on the nature of their work spent primarily on regulation and oversight of the industry in a fee category, such indirect FTEs could be considered as direct FTEs in a core bureau for regulatory fee purposes. Based on the results of our evaluation, we propose that certain indirect FTEs could be reassigned as direct FTEs and incorporate these into the count of FTEs of the relevant core bureau for purposes of calculating regulatory fees for FY 2023 which could reduce regulatory fee obligations for some small and other regulatory payees.

141. More specifically, the proposed reassignment of certain indirect FTEs to direct FTEs would result in changes in the percentages of direct FTEs in the core bureaus and a decrease in the regulatory fee assessment amounts and could therefore decrease the regulatory assessment payable by small entities. Using the methodology that does not include the indirect FTE reassignments would result in an increase in the FY 2023 regulatory assessment amounts from FY 2022 for three of the four core bureaus. However, when the indirect FTE reassignments are included in the assessment methodology, half of the core bureaus' FY 2023 regulatory assessment amounts decrease from FY 2022. Our evaluation of the indirect FTE reassignments considered treating the FTEs that were moved to OEA from core bureaus as direct FTEs and determined that some work done by OEA FTEs is work that primarily furthers the oversight and regulation of regulatory fee payors in certain industry segments. Conducting similar analyses of work for all non-core bureaus resulted in the number and indirect FTE percentages we have incorporated in our proposed

methodology and regulatory fees for FY 2023.

142. While the Commission's proposed methodology considered assessment calculations with and without indirect FTE reassignments, there could be other alternatives that help minimize the economic impact of the regulatory fees for small entities. Therefore, the NPRM invites alternative proposals or comments suggesting changes to our proposed methodology and regulatory fees for FY 2023. Alternative proposals or modification requests should contain a thorough analysis showing a sufficient basis for making the change, provide alternative options for the Commission to meet it statutory obligation to collect the full amount of the appropriation by the end of the fiscal year, and indicate how any proposed alternative options are fair, administrable, and sustainable.

143. *Broadcast Regulatory Fees.* In the NPRM, we propose to continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast television station's contour which will reduce the economic impact of the regulatory fees for some small licensees. The population-based methodology increases fees for some licensees and reduces fees for others, However, we believe the population-based metric better conforms with the service of broadcasting television to the American people. The Commission recognizes that many small independent radio broadcasters face hardships due to the COVID–19 pandemic and other issues, such as competition from satellite radio and music streaming services. The ability of these independent stations to stay in business and serve their communities is an important public interest consideration. Therefore, in the NPRM, we propose splitting the lowest population tier into two separate tiers which should reduce the economic impact for small regulators. In addition, small licensees experiencing financial hardship will continue to have access to fee relief, such as waiver, reduction, deferral and/or installment payment of their regulatory fees and may be exempt from paying a regulatory fee if the assessed fee is below the de minimus threshold that the Commission has established.

144. *Space Station Regulatory Fees.* In Tables 2 and 3 of the NPRM, we include the proposed fees for NGSO space stations calculated by assessing the fees small satellites will pay in FY 2023, reducing that amount from the overall NGSO space stations fee category, and allocating the remaining NGSO space station fees 20/80 using two fee subcategories: ''less complex'' NGSO space stations and ''other'' NGSO space stations. For small satellites and small spacecraft (together, small satellites) within the NGSO fee category, we determine that FTEs spend approximately twenty time more time on regulating one non-small NGSO space station than the FTE time spent regulating one small satellite licensee.

145. Consistent with FY 2022, in the NPRM, we propose to continue using the methodology for calculating regulatory fees for small satellites within the NGSO fee category based on 1/20th (5%) of the average of the non-small satellite NGSO space station regulatory fee rates from the current fiscal year on a per license basis. This proposal will minimize the economic impact of the regulatory fees for small satellites. The methodology reflects the significant difference of FTE time attributable to work on small satellite matters, and more equitably apportions the regulatory fees among small and non-small satellite NGSO space stations within the NGSO fee category. The methodology also accommodates fluctuations in the number of NGSO space station fee payors and continues to provide a middle ground and an opportunity to gain more experience in regulating small satellites.

146. *Continuing Flexibility in FY 2023 for Regulatory Fee Payors.* In FYs 2020, 2021, and 2022, the Commission implemented temporary measures to assist regulatees experiencing financial hardship related to the COVID–19 pandemic in seeking waiver, reduction, deferral and installment payment of their regulatory fees, In the NPRM, we consider and seek comment on whether certain of these measures should be continued in FY 2023, and if so, why. Specifically, we consider and seek comment on whether the Commission should continue (i) to offer a reduced interest and waive the down payment for installment payment of FY 2023 regulatory fees; (ii) its partial waiver of the red light rule to permit delinquent debtors to seek fee relief, conditioned on the debtor's satisfactory resolution of its delinquent debt; and/or (iii) its partial waiver of section 1.1166 of the Commission's regulations to permit regulatees seeking to waive, reduce and/or defer their regulatory fees to submit financial documentation after a request is filed.

147. *Providing Installment Payment Relief to Small Regulatory Fee Payors.* The NPRM also considers a regulator fee payment alternative suggested by broadcaster groups to reduce the economic impact of regulatory fee payments for small and other entities. Specifically, the broadcaster groups request that the Commission allow regulatees to prepay their annual regulatory fees in increments, before the annual regulatory fee payment deadline. The broadcasters state that this measure would assist broadcasters in meeting their annual regulatory fee obligation. We seek comment on the broadcasters' proposal and answers to the questions we raise in the NPRM regarding implementation and operation of such a program, including the costs and benefits of such a program.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

148. None.

VII. Ordering Clauses

149. Accordingly, it is ordered that, pursuant to sections 47 U.S.C. 4(i), 4(j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Notice of Proposed Rulemaking is hereby adopted.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–11109 Filed 5–31–23; 8:45 am]

BILLING CODE 6712–01–P

Reader Aids

Federal Register

Vol. 88, No. 105

Thursday, June 1, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

35729–36210..... 1

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10587.....35729

10 CFR

431.....36066

Proposed Rules:
431.....35765

12 CFR

Proposed Rules:
1236.....35780

14 CFR

39.....35731
71.....35734
97.....35735, 35737

Proposed Rules:
25.....35781
39 .....35783, 35785, 35788

17 CFR

229.....36002
232.....36002
240.....36002
249.....36002
274.....36002

22 CFR

22.....35738
42.....35738

26 CFR

Proposed Rules:
Ch. I.....35791

33 CFR

165.....35741

Proposed Rules:
100.....35802
165.....35805

37 CFR

202.....35741

40 CFR

Proposed Rules:
52.....35807
63.....35808
78.....35807
97.....35807

47 CFR

51.....35743
61.....35743
69.....35743

Proposed Rules:
1.....36154

50 CFR

Proposed Rules:
19.....35809
21.....35809, 35821
22.....35809, 35821
648.....35823

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

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 2023

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 1	Jun 16	Jun 22	Jul 3	Jul 6	Jul 17	Jul 31	Aug 30
June 2	Jun 20	Jun 23	Jul 3	Jul 7	Jul 17	Aug 1	Aug 31
June 5	Jun 20	Jun 26	Jul 5	Jul 10	Jul 20	Aug 4	Sep 5
June 6	Jun 21	Jun 27	Jul 6	Jul 11	Jul 21	Aug 7	Sep 5
June 7	Jun 22	Jun 28	Jul 7	Jul 12	Jul 24	Aug 7	Sep 5
June 8	Jun 23	Jun 29	Jul 10	Jul 13	Jul 24	Aug 7	Sep 6
June 9	Jun 26	Jun 30	Jul 10	Jul 14	Jul 24	Aug 8	Sep 7
June 12	Jun 27	Jul 3	Jul 12	Jul 17	Jul 27	Aug 11	Sep 11
June 13	Jun 28	Jul 5	Jul 13	Jul 18	Jul 28	Aug 14	Sep 11
June 14	Jun 29	Jul 5	Jul 14	Jul 19	Jul 31	Aug 14	Sep 12
June 15	Jun 30	Jul 6	Jul 17	Jul 20	Jul 31	Aug 14	Sep 13
June 16	Jul 3	Jul 7	Jul 17	Jul 21	Jul 31	Aug 15	Sep 14
June 20	Jul 5	Jul 11	Jul 20	Jul 25	Aug 4	Aug 21	Sep 18
June 21	Jul 6	Jul 12	Jul 21	Jul 26	Aug 7	Aug 21	Sep 19
June 22	Jul 7	Jul 13	Jul 24	Jul 27	Aug 7	Aug 21	Sep 20
June 23	Jul 10	Jul 14	Jul 24	Jul 28	Aug 7	Aug 22	Sep 21
June 26	Jul 11	Jul 17	Jul 26	Jul 31	Aug 10	Aug 25	Sep 25
June 27	Jul 12	Jul 18	Jul 27	Aug 1	Aug 11	Aug 28	Sep 25
June 28	Jul 13	Jul 19	Jul 28	Aug 2	Aug 14	Aug 28	Sep 26
June 29	Jul 14	Jul 20	Jul 31	Aug 3	Aug 14	Aug 28	Sep 27
June 30	Jul 17	Jul 21	Jul 31	Aug 4	Aug 14	Aug 29	Sep 28